

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

### Core Principles and Other Requirements for Swap Execution Facilities

OMB CONTROL NUMBER 3038-NEW

#### Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

On July 21, 2010, the US Congress passed the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>1</sup> Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”) to establish a new registered entity – swap execution facilities (SEFs) - that provides market participants with the ability to execute or trade swaps. The Dodd-Frank Act charges the Commission with prescribing rules governing SEF regulation.

The Commission is proposing to amend Part 37 to implement Section 733 of the Dodd-Frank Act. A copy of the notice of proposed rulemaking is provided within the submission for OMB’s review. It has been submitted for publication in the Federal Register. The proposed amendments to Part 37 would result in new information collections within the meaning of the PRA. The title for this proposed collection of information is Part 37 – Swap Execution Facilities. (OMB control number 3038-NEW). The new collection is as follows:

- Amendments to Part 37 will eliminate references to Derivatives Transaction Execution Facilities. Amended Part 37 will be titled “Part 37 - Swap Execution Facilities” and include, among other things, registration requirements for trading platforms or systems intending to register as SEFs. Additionally, SEFs will be subject to 15 core principles including: enforcing rules; listing contracts for trading that are not readily susceptible to manipulation; monitoring trading to prevent market manipulation; obtaining information; adopting position limits or position accountability levels; adopting rules to enforce financial integrity of swaps transactions entered on or through the SEF; adopting rules to provide for the exercise of emergency authority, in consultation with the Commission; making public information regarding prices and volume on a timely basis; maintaining records of all activities of the business of the contract market in a form and manner acceptable to the Commission for five years; and avoiding rules that result in unreasonable restraints of trade or anticompetitive burden on trading; enforce rules to minimize conflicts of interest in its decision-making

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<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

process; maintaining adequate financial resources; establishing system safeguards; and designating a chief compliance officer.

Estimated numbers of respondents and numbers of reporting hours are provided in Attachment A.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

This information will be used by the Commission to determine whether SEFs, and applicants to become SEFs, are in compliance with applicable core principles.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

All required submissions by SEFs to the CFTC must be sent in electronically (email via internet). All required information to be provided to the public may be posted on the SEF's website.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Information collected under this OMB Control Number is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available from any other source.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-I), describe the methods used to minimize burden.

The required information collected under this OMB Control number should not involve any small businesses or other small entities. The Commission has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the Regulatory Flexibility Act (RFA). The Commission is proposing that SEFs are not small entities for the purpose of the RFA.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

This question is not applicable.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

The proposed regulations do not require respondents to report any information to the Commission more often than quarterly.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:

In order for the Commission to adequately perform its statutory responsibility to determine whether SEFs, and applicants to become SEFs, are in compliance with the applicable core principles, a request for information may require the collection and presentation of information in fewer than 30 days depending on the exigency of the situation.

- requiring respondents to submit more than an original and two copies of any document;

Respondents are not required to submit more than an original and two copies of any documents.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

DCMs are required to maintain records of all activities related to their business as a contract market, in a form and manner acceptable to the Commission, for a period of five years from the date thereof and be readily accessible during the first two years of the five year period, pursuant to Commission Regulation 1.31 and Core Principle 10 (Recordkeeping). All such books and records are open to inspection by any representative of the Commission or the U.S. Department of Justice.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

The collection does not involve a statistical survey.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The collection does not involve the use of any statistical data.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

The collection does not involve any pledge of confidentiality.

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. They may be found at 17 CFR Part 145.5(c).

For enforcement purposes, Commission Rule 1.31 requires that:

“All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five-year period. All such books and records shall be open to inspection by any representative of the Commission or the US Department of Justice.”

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 C.F.R. 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A Federal Register Notice soliciting comments on this collection was published in the *Federal Register* (76 FR 1214, January 7, 2011).

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

Opportunity for public comment is provided when regulations are initiated or amended. Contact with SEFs will be maintained on a continuous and ongoing basis.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances are anticipated.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

The question is not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.”

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The regulations covered by this collection do not require the giving of sensitive information, as that term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection

activities should not be included here. Instead, this cost should be included in Item 13.

Commission staff has previously estimated hourly burdens for designated contract markets and derivatives transaction execution facilities pursuant to the Commodity Futures Modernization Act of 2000 (“CFMA”).<sup>2</sup> More recently, Commission staff estimated hourly burdens for exempt commercial markets (“ECMs”) with significant price discovery contracts (“SPDCs”). While the Commission has no way of knowing the exact hourly burden upon a registered entity prior to implementation of the regulations governing that registered entity, staff believes the estimated burden for a SEF would be within the range of previously estimated hours of burden for the above registered entities. Those hourly burdens are noted below:

Initial estimate of DCM’s annual burden <sup>3</sup> :	300 hours per DCM
Current estimate of DCM’s annual burden <sup>4</sup> :	370 hours per DCM
New estimate of DCM’s annual burden <sup>5</sup>	440 hours per DCM
Initial estimate of DTEF’s annual burden <sup>6</sup> :	200 hours per DTEF
Initial estimate of ECM’s with SPDCs annual burden <sup>7</sup> :	233 hours per ECM

Based on the proposed regulations, Commission staff believes that a SEF will have more reporting responsibilities than an ECM with a SPDCs and a DTEF, but less reporting hours as a DCM (as most recently calculated).<sup>8</sup> Based on its experience with administering registered entities’ submission requirements since implementation of the CFMA, Commission staff estimates an annual reporting burden for SEFs to be an average of the above noted estimates for DCMs, DTEFs and ECMs with SPDCs.

Staff estimates that each respondent would, on average, have an annual burden of 308 hours of reporting time. Staff estimates that 35 SEFs will register with the Commission as a result of the Dodd-Frank Act. Accordingly, the burden in terms of hours would in the aggregate 10,780 hours annually for all respondents (35 respondents x 308 hours). Commission staff estimates that respondents could expend up to \$16,016 annually based on an hourly rate<sup>9</sup> of \$52 to comply

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<sup>2</sup> Cite look up.

<sup>3</sup> 66 FR 38992 (June 22, 2000).

<sup>4</sup> 71 FR 38748 (July 7, 2006).

<sup>5</sup> New annual burden to be published with DCM rulemaking (not yet published in FR).

<sup>6</sup> 65 FR 38993 (June 22, 2000).

<sup>7</sup> 73 FR 75901 (December 12, 2008).

<sup>8</sup> ECMs with SPDCs are subject to 9 core principles, DTEFs are subject to 9 core principles, DCMs are currently subject to 18 core principles, (but will be subject to 23 core principles upon finalization of the Part 38 regulations to implementing the Dodd-Frank Act). SEFs will be subject to 15 core principles upon finalization of the regulations to implement the Dodd-Frank Act.

<sup>9</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2010 by the Securities Industry and Financial Markets Associations (2010 Report). The wage rate used is a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, a Programmer (Senior) and a Senior Treasury/Cash Management Manager as published in the 2010 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$52.00.

with the proposed regulations. This would result in an aggregated cost of \$560,560 per annum (35 respondents x \$16,016).

See attachment A.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

All costs are accounted for in responses to Items 12 and 14. Additionally see attachment A.

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of

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information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The estimate of the cost to the government per applicant/record-keeper is about \$96,000 annually based on ten full time equivalents reviewing for 20 days at 8 hours per day (1,600 hours) at an average salary of \$60 per hour<sup>10</sup>.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

This is a new collection of information.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

No exceptions exist.

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<sup>10</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used a composite (blended) rate of salaries and benefits for economists (Grade 11-13) and attorneys (Grade 11-14) in the Division of Market Oversight using the CFTC 2010 Washington Pay Chart (with adjusted locality pay) and divided that figure by 2000 annual working hours to arrive at the hourly rate of \$60.



**Collection 3038-NEW**

**Part 37 Establishing Procedures for  
Swap Execution Facilities and Applicants Seeking Registration**

Estimated Hourly Burden

Report	Estimated Number of Respondents	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours per year	Annual Reporting Burden
Designation and Compliance	35			308	10,780
Annual	35	1	35	Included in average above	Included in average above
Quarterly	35	4	140	Included in average above	Included in average above
Total	35	5	175		10,780