

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS**

OMB CONTROL NUMBER 3038-_____

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.**

Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to add section 4s(i), which requires the Commission to prescribe standards for swap dealers and major swap participants related to the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps. Pursuant to this authority, the Commission has proposed regulations that would establish requirements for swap dealers and major swap participants regarding swap confirmation, portfolio reconciliation, and portfolio compression. Confirmation, portfolio reconciliation, and portfolio compression are important, post-trade processing mechanisms for reducing risk and improving operational efficiency.

The information collection obligations imposed by the proposed regulations are necessary to implement new section 4s(i) of the CEA. In particular, they are essential to ensuring that swap dealers and major swap participants document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises.

The information collection burdens are restricted to the costs associated with the recordkeeping requirements that the proposed regulations impose upon affected registrants. The proposed regulations do not impose any reporting requirements. Under the proposed regulations, swap dealers and major swap participants are obligated to maintain records of the policies and procedures required by the proposed rules. They also are required to maintain records of their acknowledgements and confirmations (*e.g.*, records of the date and time of transmission to, or receipt from, a counterparty of any acknowledgement or confirmation; the length of time between the acknowledgment and confirmation of a swap; and the length of time between the execution and confirmation of a swap); portfolio reconciliations (*e.g.*, records of each reconciliation, any identified discrepancies, and the length of time for resolution of any discrepancies that are not resolved within a business day); and bilateral offset and bilateral and multilateral portfolio compression exercises (*e.g.*, records of the beginning and completion dates of the offset or compression exercise; the included swaps and counterparties; the eligible, but excluded, swaps; the risk tolerances set by the participant; and compression exercise results).

- 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.**

Commission staff would use the information required to be preserved when conducting the Commission's examination and oversight program with respect to the affected registrants.

- 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.**

The proposed regulations require that recordkeeping generally be performed in accordance with Commission regulation 1.31, which permits the use of electronic storage media.

- 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.**

Swap dealers and major swap participants are new categories of registrants under the Dodd-Frank Act. Accordingly, the required information is not already collected by the Commission for any other purpose. It also is not collected by any other agency or available for public disclosure through 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 collection of the required information does not involve any small businesses or small entities.

- 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.**

Failure to maintain the records required by the proposed regulations would adversely affect the Commission's ability to ensure the affected registrants' compliance with their obligations under the CEA and Commission regulations to document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises.

- 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;**

This question does not apply. The proposed regulations do not impose any reporting requirements.

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

This question does not apply.

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

This question does not apply. The proposed regulations do not impose any requirements that would obligate a respondent to submit more than an original and two copies of any document.

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

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the [CEA] or by [Commission] regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the five-year period. All such books and records shall be open to inspection by any representative of the commission or the United States 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;**

This question does not apply. The proposed regulation does not require nor involve any statistical surveys.

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

This question does not apply. The proposed regulation does not require nor involve the use of any statistical data classification.

- **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**

This question does not apply. The proposed regulation does not require a 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.**

This question does not apply. In any event, the Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations are set forth in 17 CFR Part 145.

- 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 CFR 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.**

The Commission is affirmatively seeking comment from the public and federal agencies on the proposed information collection. A copy of the proposed regulation as it appears in the *Federal Register* (75 FR 81519 December 28, 2010), including the explicit solicitation of comment on all aspects of the reporting and recordkeeping burdens imposed, is accompanied with this submission.

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).

The Commission is affirmatively seeking comment from the public and from other federal agencies on the information collection requirements of the proposed regulation, both generally and specifically regarding the variables used in the hourly burden calculations. A copy of the proposed regulation as it will appear in the *Federal Register*, including the explicit solicitation of comment, is attached hereto.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 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.**

This question does not apply. No decision to provide any payment or gift to respondents has been made.

- 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, only to the extent permitted by law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act (CEA), which strictly prohibits the Commission, unless specifically authorized by the CEA, 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.**

This question does not apply. The proposed regulations do not request or require the provision 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.**

See Attachment A.

As delineated below, the hourly burden associated with the proposed regulations is estimated to be 1,282.5 hours per swap dealer or major swap participant, at an annual cost of \$128,250 per registrant. This hourly burden is not expected to vary widely among registrants. Based upon industry data, it is anticipated that approximately 250 swap dealers and 50 major swap participants will be registered with the Commission. Thus, the total number of registrants affected by the proposed regulation is expected to be 300 and the aggregate hour burdens provided below are based upon that expectation. According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is \$74.41. Because swap dealers and major swap participants include large financial institutions whose operations management employees'

salaries may exceed the mean wage, the Commission has estimated the cost burden based upon an average salary of \$100 per hour.

Drafting and Updating Policies and Procedures. This hourly burden arises from the time necessary to develop and periodically update the policies and procedures required by the proposed regulations.

Number of registrants: 300

Frequency of collection: initial implementation, updating as needed

Estimated number of annual responses per registrant: 1

Estimated aggregate number of annual responses: 300

Estimated annual hour burden per registrant: 40 hours

Estimated aggregate annual hour burden: 12,000 burden hours [300 registrants x 40 hours per registrant]

Acknowledgment and Confirmation Recordkeeping. This hourly burden arises from the proposed requirement that swap dealers and major swap participants make and maintain records of the date and time of transmission to, or receipt from, a counterparty of an acknowledgment or confirmation; the length of time between the acknowledgment and confirmation of each swap; and the length of time between the execution and confirmation of each swap.

Number of registrants: 300

Frequency of collection: daily

Estimated number of annual responses per registrant: 252 [252 trading days]

Estimated aggregate number of annual responses: 75,600 [300 registrants x 252 trading days]

Estimated annual hour burden per registrant: 252 [252 trading days x 1 hour per day]

Estimated aggregate annual hour burden: 75,600 burden hours [300 x 252 hours]

Portfolio Reconciliation Recordkeeping. This hourly burden arises from the proposed requirement that swap dealers and major swap participants make and maintain records of the portfolio reconciliation exercises in which they engage. Registrants would be required to reconcile portfolios with counterparties that are swap dealers and major swap participants on a daily, weekly, or quarterly basis, depending upon the size of the portfolio. They also would be required to maintain policies and procedures for conducting portfolio reconciliation with other counterparties with similar frequency.

Number of registrants: 300

Frequency of collection: daily, weekly, or quarterly

Estimated number of annual responses per registrant: 8,120¹

¹ Due to the absence of prior experience in regulating swap dealers and major swap participants and with regulations similar to the proposed rules, the actual, average number of counterparties that a swap dealer or major swap participant is likely to have and the average size of its portfolio with particular counterparties is uncertain. The estimate of 5,600 portfolio reconciliation records is based upon the assumption that each swap dealer and major swap participant engages in swap transactions with approximately one third (100) of the other swap dealers or major swap participants and that 10% of such portfolios would require daily reconciliation; 20% would require weekly reconciliation; and 70% would require quarterly reconciliation. The estimate also is based upon the assumption that a swap dealer or major swap participant has an average of 440 other counterparties and that all of the portfolios with

Estimated aggregate number of annual responses: 2,436,000 [300 registrants x 8,120 responses]
Estimated annual hour burden per registrant: 812 hours [8,120 x .10 hours per response]
Estimated aggregate annual hour burden: 243,600 burden hours [300 registrants x 812 hours per registrant]

Portfolio Compression Recordkeeping. This hourly burden results from the proposed requirement that swap dealers and major swap participants make and maintain records of the bilateral offsets and portfolio compression exercises in which they participate, including the beginning and completion dates; the swaps that were included and excluded; the applicable risk tolerance levels; and the results of the particular exercise.

Number of registrants: 300

Frequency of collection: as needed

Estimated number of annual responses per registrant: 1,029 [24 multilateral compression records²] + [465 bilateral compression exercise records³] + [540 bilateral offset records⁴]

Estimated aggregate number of annual responses: 308,700 [300 registrants x 1,029 responses per year]

Estimated annual hour burden per registrant: 178.5 hours [24 multilateral compression records x .5 hours per records] + [465 bilateral compression exercise records x .3 hours per records] + [540 bilateral offset records x .05 hours per record]

Estimated aggregate annual hour burden: 53,550 burden hours [300 registrants x 178.5 hours per registrant]

Based upon the above, the aggregate hourly burden for all registrants for all recordkeeping requirements is 384,750 hours and \$38,475,000 [384,750 x \$100 per hour].

those counterparties generally would be limited to quarterly reconciliation. Consistent with other proposed rulemakings, the Commission has estimated that each of the 14 major swap dealers has an average 7,500 counterparties and the other 286 swap dealers and major swap participants have an average of 200 counterparties per year, for an average of 540 total counterparties per registrant. The Commission estimates that 440 of those counterparties would not be other swap dealers or major swap participants.

² This estimate assumes that swap dealers and major swap participants would engage in multilateral compression exercises for 2 asset classes at an average rate of 12 multilateral compression exercises per year (approximately 1 per month).

³ As with other approximations set forth in this supporting statement, the estimate of 465 bilateral compression exercise records is based upon the assumption that each swap dealer and major swap participant engages in swap transactions with approximately one third (100) of the other swap dealers or major swap participants. Because it is anticipated that most swaps between swap dealers and major swap participants would be eligible for multilateral portfolio compression exercises, the Commission expects that a swap dealer or major swap participant would need to engage in annual bilateral compression with only one quarter of (25) such counterparties. The estimate also is based upon the assumption that the average swap dealer or major swap participant has an average of 440 non-swap dealer or major swap participant counterparties and would engage in 1 bilateral portfolio compression exercise with each. This would result in a total of 465 bilateral portfolio compression records (25 + 440).

⁴ This estimate is based upon the assumption that each swap dealer and major swap participant will have an average of 1 set of swaps that is eligible for annual bilateral offset with each of its estimated 540 counterparties per year.

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.**

The Commission anticipates that swap dealers and major swap participants may incur minimal start-up costs in connection with the proposed recordkeeping obligations. Such costs would include the expenditures related to developing and installing new recordkeeping technology or re-programming or updating existing recordkeeping technology, and systems to enable the swap dealer or major swap participant to collect, maintain, and re-produce any newly required records. The Commission believes that swap dealers and major swap participants generally could adapt their current infrastructure to accommodate the new or amended technology and thus, no significant infrastructure expenditures would be needed. The Commission estimates the programming burden hours associated with technology improvements to be 40 hours.

According to recent Bureau of Labor Statistics findings, the mean hourly wages of computer programmers under occupation code 15-1021 and computer software engineers under program codes 15-1031 and 1032 are between \$34.10 and \$44.94. Because swap dealers and major swap participants generally will be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of

\$60 per hour. Accordingly, the start-up burden associated with the required technological improvements would be \$2,400 [\$60 x 40 hour per affected registrant] or \$720,000 in the aggregate.

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

It is not anticipated that the proposed regulations would impose any additional costs to the Federal Government.

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

The program changes or adjustments are required by the Dodd-Frank Act, which established a new regulatory scheme.

- 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.**

This question does not apply.

Attachment A

Part 23 – Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants

OMB Collection File 3038-

Number of Registrants: 300

Frequency of Recordkeeping: Daily, weekly, quarterly, or as needed (see chart below)

Start-up Cost Per Registrant: \$2,400

Aggregate Start-Up Cost: \$720,000

Estimated Average Burden Hours Per Registrant: 1,282.5

Estimated Aggregate Burden Hours: 384,750

Estimated Annual Cost Per Registrant: \$128,250

Estimated Aggregate Annual Cost: \$38,750,000

See methods of calculation listed in response to question 12 of this Supporting Statement

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Annual Hour Burden Per Registrant	Estimated Aggregate Hour Burden	Estimated Annual Cost Per Registrant	Estimated Aggregate Annual Cost
Recordkeeping: Drafting & Updating Policies and Procedures	300	Initial implementation, updating as needed	1	300	40 hours	40 hours	12,000 hours	4,000	1,200,000
Recordkeeping: Acknowledgement and Confirmation	300	Daily	252	75,600	1 hour	252 hours	75,600 hours	25,200	7,560,000
Recordkeeping: Portfolio Reconciliation	300	Daily, weekly or quarterly	8,120	2,436,000	.10 hours	812 hours	243,600 hours	81,200	24,360,000
Recordkeeping: Portfolio Compression	300	As needed	1,029	308,700	.17 hours	178.5 hours	53,550 hours	17,850	5,355,000
Total						1,282.5	384,750	128,250	38,475,000