

**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 new 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. Proposed regulation 23.504(b)(5) supplements previously proposed regulations that would establish trading relationship documentation requirements for swap dealers and major swap participants. Specifically, the proposed regulation would require swap dealers and major swap participants to include in the trading relationship documentation that they execute with their counterparties a written agreement about events that will transpire if the FDIC is appointed as a receiver under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act (FDIA).

The documentation required to be executed and maintained pursuant to the proposed regulation is necessary to implement section 4s(i) of the CEA and would be an important part of the Commission's regulatory program for swap dealers and major swap participants. Specifically, the required recordkeeping is essential to ensuring that swap dealers and major swap participants include in their trading relationship documentation certain agreements that are designed to enhance the consistent treatment of swaps in the event the FDIC is appointed receiver under Title II of the Dodd-Frank Act or the FDIA.

- 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.**

The information required to be preserved would be used by representatives of the Commission and any examining authority responsible for reviewing the activities of the swap dealer or major swap participant to ensure compliance with the CEA and applicable Commission regulations.

- 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.**

Pursuant to previously proposed regulation 23.504(d), the recordkeeping would be required to 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 Form 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 execute and maintain the agreement required by the proposed regulations would adversely affect the Commission's ability to ensure that swap dealers and major swap participants comply with their documentation obligations under the CEA and Commission regulations and to ensure consistent treatment of swaps in the event that the FDIC is appointed receiver under Title II of the Dodd-Frank Act or the FDIA.

- 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 regulation does not contain 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 requirement 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. 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 80572 December 22, 2010), including the explicit

solicitation of comment on all aspects of the reporting and recordkeeping burdens imposed, is accompanied with this submission

The Commission is affirmatively seeking comment from the public and from other federal agencies on all aspects of the recordkeeping burden imposed by the proposed regulation. A copy of the proposed rule as it will appear in the *Federal Register*, including the explicit solicitation of comment, is attached hereto.

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 all aspects of the recordkeeping burden imposed by the proposed regulation. A copy of the proposed rule 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 nor 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. The information collection burden associated with drafting and maintaining the agreements required by the proposed regulation is estimated to be 270 hours per year, at an initial annual cost of \$27,000 for each swap dealer and major swap participant. The aggregate information collection burden is estimated to be 81,000 hours per year, at an initial annual cost of \$8,100,000. The Commission has characterized the annual cost as an initial cost as the Commission anticipates that the agreement required by the proposed regulation generally would not require significant bilateral negotiation and, therefore, is likely to become standardized within the industry rather rapidly. Moreover, the Commission expects that there would be little need to modify the agreement on an ongoing basis. Accordingly, once a swap dealer or major swap participant has drafted the required agreement and incorporated it into its swaps trading documentation, the annual burden associated with the proposed regulation would be quite minimal.¹

The hour burden calculation applicable to the proposed regulation is based upon certain variables such as the number of swap dealers and major swap participants in the marketplace, the average number of counterparties of each of these registrants, and the average hourly wage of the employees that would be responsible for satisfying the obligation established by the proposed

¹ The Commission notes that swap dealers and major swap participants also would be required to develop written policies and procedures to maintain the obligatory agreement as part of their swaps trading relationship documentation. The costs associated with these policies and procedures have been accounted for in the Commission's prior proposal of the rest of regulation 23.504.

regulation. Swap dealers and major swap participants are new categories of registrants. Accordingly, it is not currently known how many swap dealers and major swap participants will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective after July 16, 2011, the date on which the Dodd-Frank Act becomes effective. While the Commission believes that there will be approximately 200 swap dealers and 50 major swap participants, it has taken a conservative approach, for PRA purposes, in estimating that there will be a combined number of 300 swap dealers and major swap participants who will be required to comply with the recordkeeping requirements of the proposed rules. The Commission estimated the number of affected entities based on industry data.

Similarly, 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 is uncertain. 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 anticipates that agreement required by the proposed regulations typically would be drafted and maintained by a swap dealer or major swap participant's in-house counsel or by financial or operational managers within the firm. According to the Bureau of Labor Statistics findings, the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage Industry" is \$82.22.² The mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," (which includes operations managers) in the same industry is \$74.41.³ Because swap dealers and major swap participants include large financial institutions whose employees' salaries may exceed the mean wage, however, the Commission has estimated the cost burden of the proposed regulations based upon an average salary of \$100 per hour.

Based upon the above, the estimated hour burden was calculated as follows:

Agreement to Orderly Liquidation Termination Provision.

Number of registrants: 300

Frequency of collection: At least once per counterparty

Estimated number of annual responses per registrant: 540 [one per counterparty]

Estimated aggregate number of annual responses: 162,000 [300 registrants x 540 counterparties]

Estimated annual hour burden per registrant: 270 [540 counterparties x .5 hours per counterparty]

Estimated aggregate annual hour burden: 81,000 [300 registrants x 270 hours per registrant]

² <http://www.bls.gov/oes/2099/mayowe23.1011.htm>.

³

<http://www.bls.gov/oes/current/oes113031.htm>.

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.**

As stated above, the agreement required by proposed regulation 23.504(b)(5) would be required to be incorporated into the swaps trading relationship documentation established by previously proposed subsections of regulation 23.504(b). The Commission does not anticipate that swap dealers and major swap participants would incur any start-up costs in connection with the proposed recordkeeping obligations, other than those previously noted and accounted for in the prior proposal.

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 – Orderly Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants

OMB Collection File 3038-

Number of Registrants: 300

Frequency of Collection: At least once per counterparty

Start-up Cost Per Registrant: \$0

Aggregate Start-Up Cost: \$0

Estimated Average Annual Burden Hours Per Registrant: 270

Estimated Aggregate Annual Burden Hours: 81,000

Estimated Annual Cost Per Registrant: \$27,000

Estimated Aggregate Annual Cost: \$8,100,000

% of Responses Collected Electronically: 100%

Requirement	Estimated Number of Registrants Per Year	Frequency of Collection	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: Agreement to Orderly Liquidation Termination Provision	300	At least once per counterparty	540	162,000	.5	270 hours	81,000 hours	\$27,000	\$8,100,000