

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

OMB CONTROL NUMBER 3038-[_____]

(For DCO Final Rules which finalizes the NOPR: Information Management for Derivatives
Clearing Organizations)

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, President Obama signed the Dodd-Frank Act.¹ Title VII of the Dodd-Frank Act² amended the Commodity Exchange Act (CEA)³ to establish a comprehensive new regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 725(c) of the Dodd-Frank Act amends Section 5b(c)(2) of the CEA. Under CEA Section 5b(c)(2), as amended, Congress set forth core principles with which a derivatives clearing organization ("DCO") must comply to be registered and to maintain registration as a DCO. Furthermore, Congress expressly confirmed that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under Section 8a(5) of the CEA.⁴ Consequently, the Commission is proposing a rulemaking requiring DCO information management and is based on four core principles outlined in the amended CEA Section 5b(c)(2): Core Principles J, K, L, and M.

Core Principle J, as amended by the Dodd-Frank Act, requires a DCO to provide the Commission with all information that Commission determines to be necessary to conduct oversight of the DCO. Core Principle K, as amended by the Dodd-Frank Act, requires a DCO to maintain records of all activities related to the business of the DCO as a DCO, in a form and manner that is acceptable to the Commission and for a period of not less than 5 years. Core Principle L, as amended by the Dodd-Frank Act, requires a DCO to provide market participants

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov>.

² Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

³ 7 U.S.C. 1 *et seq.*

⁴ Section 8a(5) of the CEA authorizes the Commission to promulgate such Regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the DCO's services. A DCO is, more specifically, required to make available to market participants information concerning the rules and operating and default procedures governing its clearing and settlement systems and also disclose publicly and to the Commission the terms and conditions of each contract, agreement and transaction cleared and settled by the DCO, each clearing and other fee charged to members, margin-setting methodology, daily settlement prices, and other matters relevant to participation in the DCO's settlement and clearing activities. Core Principle M, as amended by the Dodd-Frank Act, requires a DCO to enter into and abide by terms of each appropriate and applicable domestic and international information-sharing agreement and use relevant information obtained under such agreements in carrying out its risk management program.

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 received pursuant to the proposal would be analyzed by Commission staff and would form a basis for on-going evaluation and oversight of the financial integrity of DCOs and compliance with the CEA and Commission regulations. It would inform the Commission concerning whether the Commission should take any action regarding the failure of financial and risk management practices or lack of compliance with the CEA.

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.

Unless there is an emergency situation where the respondent might report to the Commission by telephone, information is required to be submitted electronically.

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.

This question is not applicable. The CFTC is issuing new regulations that create a new information collection. Consequently, the Commission does not collect information currently that is or will be duplicative of the collection generated by this DCO Information Management rulemaking.

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.

This collection of information will not have a significant impact on a substantial number of small entities. The required information does not involve any small businesses or other 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.

If the information required under this collection of information were not collected, enforcement of the CEA and Commission rules would be adversely affected.

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 require respondents to report information to the Commission annually, quarterly, daily, and episodically, *i.e.*, event specific.

The Commission would need margin data on a daily basis to effectively maintain oversight of a DCO and to be alerted to unusual activity on a timely basis.

Event-specific reporting may or may not be more often than quarterly. The rulemaking identifies 12 situations that might trigger a reporting.

- **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 assess a DCO's financial and governance stability might require a DCO to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation. At all times, the Commission's goal is to protect the integrity of the U.S. clearing system.

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

DCOs are required to submit documents electronically, only once. No hard copies are required..

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

The Proposal mandates record retention, in compliance with the CEA's explicit requirement that records be maintained in a form and manner that is acceptable to the Commission for a period of not less than 5 years.

- **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;**

No statistical surveys are involved.

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

The requirements do not involve 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**

The requirements do not involve an unsupported pledge of confidentiality regarding the collection of data.

- **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 agency has procedures to protect the confidentiality of a respondent's information. These are set forth in 17 CFR Part 145.

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 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. 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 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.

A copy of the *Federal Register* notice soliciting comments on this collection is attached.

The Commission was able to estimate the costs of providing reports (as summarized in Attachment A). In response to the Commission's request for comment, two commenters suggested that the variable cost for daily reporting could be significantly more than the Commission's estimates if the Commission were to require a costly format and method of delivery. A commenter also suggested that the Commission may have underestimated the cost of providing the annual report (audited financial report under § 39.19(c)(3)(ii)), and that the Commission's estimate is "extremely excessive, particularly when most of [the annual reporting requirements do] not appear to be required by the Dodd-Frank Act." Finally, a commenter expressed its belief that the proposed rules will not guarantee increased market participation or

improve legitimate risk management and hedging activity, and the additional costs will create barriers to entry and decrease DCO competition.

Although commenters suggested that the costs of preparing the reports may be greater than the Commission's estimates, neither DCO provided an alternative estimate. Nor did they suggest alternative reporting requirements that would achieve the purposes of the CEA with a more favorable cost-benefit ratio. As to the estimated costs of the required format and method of delivery, the Commission notes that it based its estimate on the cost of using the SHAMIS system. The Commission has no basis for concluding that the cost of using an alternative system would be less substantial and it received no comments on this.

The Commission believes that the costs that DCOs will incur to implement a system to provide such information to the Commission are necessary and justified; the Commission has determined that the information required in the reports is necessary for the Commission to conduct adequate oversight of DCOs, particularly given its limited ability to conduct on-site reviews.

<http://comments.cftc.gov/PublicComments/CommentList.aspx?id=929>

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 seeking public comments on the collection of information.⁵ Commission staff has held meetings with persons outside the agency to discuss information management generally.

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.

Not applicable.

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

This question does not apply.

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

⁵ The Commission is also consulting with other Federal agencies regarding the implementation of Dodd-Frank.

The Commission does not provide respondents with an assurance of confidentiality, only to the extent permitted by law. Section 8(a) of the CEA provides for data confidentiality except under limited circumstances. The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

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. None of the required information is sensitive, 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.

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.

Total costs are included in the answer to question 12. 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 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 respondent is about \$8,797 per year with an additional initial cost of 4,833 per respondent. For the initial cost, this is primarily the cost of technology and salary and benefits as follows: 1,000 hours at an average salary of \$58 per hour. For the annual costs, this is primarily salaries and benefits for staff to analyze the information received, as follows: a full time equivalents reviewing for 7 hours per trading day and an additional 70 hours per year reviewing other required reports at an average salary of \$58 per hour. The total number of hours of review time per respondent each year is 146 hours (7 hours x 250 trading days).

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 Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection 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.

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Attachment A

[Section 731 of the Dodd-Frank Act] – Rules Pertaining to Registration Requirements Applicable to Derivatives Clearing Organization

OMB Collection File 3038-[_____]

The burden associated with the proposed new rules implementing information-management collection for derivatives clearing organizations is estimated as follows:

Commission staff estimates that all respondents could expend in the aggregate between \$690 initially and \$485,940 annually to comply with the proposed regulations. Depending on the expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$185 per hour.

1. Collection 3038-XXXX – Daily Reporting Requirements for Derivatives Clearing Organizations

	Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
Initial	12	1	12	15	180	\$690*
Annually	12	250*	3000	0.1	300	\$1,400

* Taking into account an average salary of \$46 per hour.

**Indicates the approximate number of trading days in the fiscal year.

*** Assumes an average salary of \$56 per hour to account for ongoing recordkeeping costs.

2. Collection 3038-XXXX – Annual Reporting Requirements for Derivatives Clearing Organizations

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
12	1	12	2606	31,272	\$482,110*

*Taking into account an hourly cost of \$185.

3. Collection 3038-XXXX – Event-Specific Reporting Requirements for Derivatives Clearing Organizations

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
12	4	48	5.6	268.8	\$1,680*

*Taking into account an hourly cost of \$75.

4. Collection 0038-3038 – Recordkeeping Requirements for Derivatives Clearing Organizations

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
12	1	12	100	1200	\$1,000*

*Taking into account an hourly cost of \$10.

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