

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-[_____]

(For DCO Final Rules which finalizes the NOPR: Risk Management Requirements 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 risk management and is based on six core principles outlined in the amended CEA Section 5b(c)(2): Core Principles C, D, E, F, G and I. The Commission is also requiring any person seeking to register as a DCO to submit a completed Form DCO as provided in the appendix to part 39, accompanied by all applicable exhibits

Core Principle C, as amended by the Dodd-Frank Act, requires each DCO to establish appropriate admission and continuing eligibility standards for members of, and participants in, the DCO, including sufficient financial resources and operational capacity to meet the obligations arising from participation. Core Principle C further requires that such participation

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.

and membership requirements be objective, be publicly disclosed, and permit fair and open access. Core Principle C also requires that each DCO establish and implement procedures to verify compliance with each participation and membership requirement, on an ongoing basis. With respect to product eligibility, Core Principle C requires that each DCO establish appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing. Core Principle D, as amended by the Dodd-Frank Act, requires each DCO to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures. It further requires each DCO to measure its credit exposures to each clearing member not less than once during each business day and to monitor each such exposure periodically during the business day. Core Principle D also requires each DCO to limit its exposure to potential losses from defaults by clearing members, through margin requirements and other risk control mechanisms, to ensure that its operations would not be disrupted and that nondefaulting clearing members would not be exposed to losses that nondefaulting clearing members cannot anticipate or control. Finally, Core Principle D requires that the margin that the DCO requires from each clearing member must be sufficient to cover potential exposures in normal market conditions and that each model and parameter used in setting such margin requirements must be risk-based and reviewed on a regular basis. Core Principle E, as amended by the Dodd-Frank Act, requires a DCO to: (a) complete money settlements on a timely basis, but not less frequently than once each business day; (b) employ money settlement arrangements to eliminate or strictly limit its exposure to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements); (c) ensure that money settlements are final when effected; (d) maintain an accurate record of the flow of funds associated with money settlements; (e) possess the ability to comply with the terms and conditions of any permitted netting or offset arrangement with another clearing organization; (f) establish rules that clearly state each obligation of the DCO with respect to physical deliveries; and (g) ensure that it identifies and manages each risk arising from any of its obligations with respect to physical deliveries. Core Principle F, as amended by the Dodd-Frank Act, requires a DCO to: (a) establish standards and procedures that are designed to protect and ensure the safety of its clearing members' funds and assets; (b) hold such funds and assets in a manner by which to minimize the risk of loss or of delay in the DCO's access to the assets and funds; and (c) only invest such funds and assets in instruments with minimal credit, market, and liquidity risks. Core Principle G, as amended by the Dodd-Frank Act, requires each DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or otherwise default on their obligations to the DCO. In addition, Core Principle G requires each DCO to clearly state its default procedures, make its default rules publicly available, and ensure that it may take timely action to contain losses and liquidity pressures and to continue meeting its obligations. Core Principle I, as amended by the Dodd-Frank Act, requires each DCO to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems that are reliable, secure, and have adequate scalable capacity. Core Principle I also requires each DCO to establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations of, and the fulfillment of each obligation and responsibility of, the DCO. Finally, Core Principle I requires each DCO to periodically conduct tests to verify that its backup resources are sufficient to ensure daily processing, clearing, and settlement.

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. It would also be used as the basis for determining whether applicants meet the necessary criteria to register as a derivatives clearing organization.

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 83-1), 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;**

Certain event-specific reporting may or may not be more often than quarterly. The rulemaking identifies 1 situation that might trigger a such a reporting requirement.

- **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 that 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.

With respect to the estimated costs identified in the Risk Management notice of proposed rulemaking, the Commission noted that the Commission had estimated the total hours for the proposed collection of information to be 50 hours per year per respondent for the additional reporting requirements at an annual cost of \$500 per respondent (50 hours X \$10). A commenter stated its belief that these estimates, both in hours and cost, are extremely low, and that it did not appear that the Commission had accounted for the costs to implement a system; collect, forward and format data; monitor and enforce compliance; and document compliance with the proposed rulemaking. The commenter also noted that the costs are not limited to reporting to the Commission for many of the proposed rules, and that reporting may be the least expensive facet. The commenter specifically identified reporting the gross position of each beneficial owner as a requirement for which the Commission did not provide any cost estimates.

Although the commenter stated commented that the costs of the proposed requirements may be greater than the costs the Commission set forth in the Risk Management proposed rulemakings, the commenter did not provide an estimate of these costs. Nor did the commenter suggest alternative reporting requirements that would achieve the purposes of the CEA with a more favorable cost-benefit ratio.

<http://comments.cftc.gov/PublicComments/CommentList.aspx?id=957>

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.

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**

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

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 for new event-specific reporting requirements is negligible as existing staff will be available to receive such notices. Receiving applications to register as a derivatives clearing organization is a pre-existing activity and it is anticipated that the "cost" to the Commission will decrease with the efficiencies provided by the new form. The cost of application review cannot be stated as a fixed number because each application is unique.

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.

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 \$100,000 initially and \$520 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 \$400 per hour.

1. Collection 3038-XXXX – Derivatives Clearing Organization Applicants Reporting Requirement

	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	3	1	3	400	1200	\$100,000*

* Taking into account an average salary of \$75-400 per hour.

2. 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	2	24	0.1	2.4	\$20*

*Taking into account an hourly cost of \$100.

3. Collection 3038-XXXX – 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	50	600	\$500*

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