

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

**Registration of Swap Dealers and Major Swap Participants**

**OMB CONTROL NUMBER 3038-0072**

**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 Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things, providing for the registration and comprehensive regulation of swap dealers (“SDs”) and major swap participants (“MSPs” and, together with SDs, “Swaps Entities”). Section 731(b) of the Dodd-Frank Act added CEA Sections 4s(a) and 4s(b), which require Swaps Entities to register with the Commodity Futures Trading Commission (“Commission”). Section 731(d) of the Dodd-Frank Act requires the Commission to adopt rules for registered swaps entities, and CEA Section 4s(b)(2) states that a Swaps Entity registration application shall be made in the form and manner prescribed by the Commission. The Commission therefore proposed (“Proposal”)<sup>1</sup> and is adopting regulations (“Swaps Entity Registration Regulations”) regarding the process for registering Swaps Entities with the Commission. The Commission’s existing registration process for futures, commodity options and retail forex intermediaries, as well as for floor traders and floor brokers, is extensively set forth in Part 3 of the regulations under the CEA. Some parts of the Swaps Entity Registration Regulations consist entirely of adding appropriate references to SDs and MSPs to existing Part 3 regulations. Other parts involve substantive changes to existing Part 3 regulations because of the particular characteristics of SDs, MSPs and swaps. To the extent practicable, the Commission is adopting requirements that are unique to SDs and MSPs in a new Part 23 of the regulations under the CEA. Regulation 170.16 would require SDs and MSPs to become members of a registered futures association (“RFA”). The collections required by the Proposal are necessary to implement the Dodd-Frank Act.

**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 Swaps Entity Registration Regulations would be analyzed by Commission staff and would form a basis for recommendations to the Commission concerning approval of registration, compliance with the CEA’s requirements, or whether the Commission should take any action regarding lack of compliance with the CEA.

---

<sup>1</sup> 75 FR 71379 (Nov. 23, 2010).

**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.**

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.**

SDs and MSPs are new classes of registrants; as such, the required information is not available from any other source. Section 731(c) of the Dodd-Frank Act requires registration of SDs and MSPs regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission. If an SD or MSP is already registered with the Commission, or if an applicant seeks to register in more than one capacity, it is just a matter of checking off the box on the screen of the requisite electronic, online form.<sup>2</sup>

**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 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;**

---

<sup>2</sup> These forms are available on the website of the National Futures Association (“NFA”), a registered futures association to whom the Commission previously has delegated processing responsibility for existing categories of registrants under the CEA. The Commission similarly intends to delegate to NFA the authority to process registration forms filed by SDs and MSPs. The forms will be amended in time for compliance with the Swaps Entity Registration Regulations.

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

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

In order for the Commission to adequately assess whether a Swaps Entity may be registered, a swaps entity might be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation.

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

Swaps Entities are required to submit only single copies of applications.

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

The Swaps Entity Registration Regulations do not specifically mandate retention of any registration records. However, 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."

- **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 a 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.**

The Commission's Proposal soliciting comments on this Collection was published in the *Federal Register* (75 FR 71379 – 11/23/10). The Commission received two comments addressing the Proposal's Paperwork Reduction Act ("PRA") discussion of the information collection and the related burden hour estimates. OMB commented that the burden hours estimated for the registration forms appeared to be low, and instructed the Commission to consider any comments it received on the proposed regulations to determine if the burden hours estimated need revision. The Commission received only one other comment addressing the information collection. The comment, received from an industry association, stated that "[a]lthough the Paperwork Reduction Act section of the release accompanying the Proposed Regulations (the 'Release') suggests that it will merely take a matter of minutes for Swaps Entities to complete the forms required by the Proposed Regulations, we are dubious that this is accurate." In considering the industry association's comment, the Commission emphasizes that the quoted statement from a footnote in the comment letter is the only mention of the information collection. This commenter neither explained why it doubted the accuracy of the burden hour estimates, nor did it suggest alternative estimates. After reevaluating the burden hour estimates in light of the comments received, the Commission has determined to increase the burden hour estimates.

In response to the comments, the Commission offers the following specific information about the registration forms. The forms Swaps Entities must complete for registration only request information about the applicant and its principals necessary for the Commission to appropriately exercise its statutory registration and compliance oversight functions with respect to them. This information generally includes the names, addresses, location of records, regulatory and disciplinary histories, and other similarly straightforward matters – all of which should be in the possession of the applicant and readily available for the applicant to provide. However, some

Swaps Entities may be unfamiliar with the current registration process and the Forms 7-R and 8-R that they must complete in order to apply for registration as an SD or MSP.

The PRA estimates provided for these forms are averages that do not necessarily reflect the actual time to be expended by each and every person to complete the forms. The Commission's estimates do not account significantly for the amount of time it would take to complete the regulatory and disciplinary history sections of the forms, which impose the greatest burden on persons completing the forms where the applicant SD or MSP (including a principal thereof) has an extensive criminal or disciplinary history. The Commission believes such SDs and MSPs will generally not be applying for registration in the first place because they will likely be disqualified from registration pursuant to CEA Section 8a(2) or 8a(3). Additionally, these forms will be completed in an online, user-friendly process developed by NFA (the Commission's delegatee pursuant to CEA Section 8a(10)), which process currently is used by all other applicants for registration with the Commission.

Moreover, in proposing and adopting the Swaps Entity Registration Regulations, the Commission has made every effort to establish a process that is minimally disruptive to the swap markets and minimally burdensome to Swaps Entities. In so doing, and as it proposed, the Commission is incorporating the registration process for Swaps Entities into the existing regulatory scheme for all other Commission registrants under Part 3 – as opposed to constructing a fundamentally new registration structure for Swaps Entities. While current registrants may be familiar with this scheme, some Swaps Entities will not have previously applied for registration with the Commission, and the revised burden estimates take the potential unfamiliarity of new applicants for registration into account.

The forms that Swaps Entities will be required to complete are virtually identical to those forms that other Commission registrants must currently complete, including retail foreign exchange dealers, who became subject to the Commission's registration requirements in 2010. There is, however, a significant difference to which Swaps Entities will be subject in connection with completing the Form 7-R. CEA Section 4s(b)(6) prohibits a Swaps Entity, except to the extent otherwise provided by rule, regulation or order, from permitting a person associated with it who is subject to a statutory disqualification to effect or be involved in effecting swaps on the Swaps Entity's behalf, if the Swaps Entity "knew, or in the exercise of reasonable care should have known, of the statutory disqualification." Form 7-R incorporates CEA Section 4s(b)(6) into the application for registration as an SD or MSP by explicitly quoting the statutory language and requiring the applicant to certify that "the applicant is and shall remain in compliance with Section 4s(b)(6) of the Act." Because of the additional time required to gather such background information on a Swaps Entity's associated persons as is necessary to make that certification, the Commission believes an increase in the time required for the Swaps Entity to complete the Form 7-R is warranted.

Further, the PRA estimates provided in the Commission's Proposal are for the registration process rulemaking only. Specifically, the estimates include only the time to be expended by applicants' and registrants' personnel to complete the forms. The estimates do not include any additional time expended to collect, produce or otherwise develop the documentation required to demonstrate compliance with other substantive requirements in CEA Section 4s (*e.g.*, capital and margin and business conduct standards) (Section 4s Implementing Regulations) that

are applicable to Swaps Entities. The Commission has estimated the burden hours associated with the information collections in connection with the Section 4s Implementing Regulations separately in the rulemakings proposing those regulations, and it will address those collections and any comments received in the corresponding final rulemakings.

The Commission believes that the explanation above adequately addresses both comments received on the burden hour estimates, and for the reasons stated, will increase the burden hours as explained in question 12 below and Attachment A. Use this link to access comment file: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=903>

**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 sought public comments on the collection of information. Commission staff has held meetings with persons outside the agency to discuss the registration process 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. 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.

**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 provided by law. The Commission fully complies with section 8(a)(1) of the 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.” 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. The Commission estimates that an aggregate of 770 respondents will file a total of 770 responses. The estimated average number of hours per response is 1.0 hour per response for the Form 7-R; 0.8 hours per response for the Form 8-R; 0.1 hours per response for the Form 7-W; 0.2 hours per response for the Form 8-T; and 0.1 hours per response for the Form 3-R. The cost of the hourly burden is estimated to be between \$10 and \$25 per hour.

**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. No new start-up and maintenance costs are involved.

**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.**

There are no new annualized costs to the Commission that will result in connection with the adoption of the registration process for SDs and MSPs.<sup>3</sup>

**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 Act, which established a new regulatory scheme for swaps and Swaps Entities.

**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.

---

<sup>3</sup> This is because, as is stated in n. 1 above, the Commission intends to delegate to NFA the authority to process registration forms filed by SDs and MSPs. Commission staff periodically conducts reviews of NFA's registration processing program, and its review of how NFA is processing the registration forms filed by SDs and MSPs will be folded into the existing review scheme.

**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 Swap Dealers and Major Swap Participants**

#### **OMB Collection File 3038-0072**

In the Proposal, the Commission estimated that the burden associated with the proposed new regulations implementing the registration process for SDs and MSPs would be 752 hours, based on a conservative estimate that 300 SDs and MSPs would register with the Commission and respond to this information collection. Since the Proposal's publication in November 2010, the Commission has met with industry participants, discussed extensively the universe of potential registrants with NFA, and reviewed public information about potential SDs active in the market and certain trade groups. Over time, and as the Commission has gathered more information on the swap market and its participants, the estimate of the number of SDs and MSPs has decreased. After recently receiving additional specific information from NFA on the regulatory program it is developing for SDs and MSPs, the Commission believes that approximately 125 persons will come within the SD or MSP definition and, thus, be subject to registration with the Commission.

Further, in response to comments it received on the Proposal, the Commission determined to increase the burden hour estimates for each of the registration forms. Accordingly, the following estimates are based upon 125 Respondents/Affected Entities and the increased burden hour estimates for the registration forms.

The burden associated with this information collection is now estimated to be 629 hours, which will result from: (1) application for registration by SDs and MSPs and submission of required information on behalf of their respective principals; (2) initially, no withdrawals from registration by SDs and MSPs and a relatively small decrease in the number of their respective principals; and (3) initially, no reported corrections. The respondent burden for this collection is estimated to average 1.0 hours per response for the Form 7-R; 0.8 hours per response for the Form 8-R; 0.1 hours per response for the Form 7-W; 0.2 hours per response for the Form 8-T; and 0.1 hours per response for the Form 3-R. These estimates include the time needed: to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; and to transmit or otherwise disclose the information. The estimated burden was calculated as follows:

#### Form 7-R

Respondents/Affected Entities: 125

Estimated number of responses: 125

Estimated total annual burden on respondents: 1.0 hours

Frequency of collection: On occasion and annually

Burden statement: 125 respondents x 1.0 hours = 125 Burden Hours

#### Form 8-R

Respondents/Affected Entities: 5 principals per each of 125 SDs and MSPs

Estimated number of responses: 625

Estimated total annual burden on respondents: 0.8 hours

Frequency of collection: On occasion

Burden statement: 625 respondents x 0.8 hours = 500 Burden Hours

Form 8-T

Respondents/Affected Entities: 1 principal per each of 20 SDs and MSPs

Estimated number of responses: 20

Estimated total annual burden on respondents: 0.2 hours

Frequency of collection: On occasion

Burden statement: 20 respondents x 0.2 hours = 4 Burden Hours

Commission staff estimates that all respondents could expend in the aggregate between \$6,290 and \$15,725 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 \$25 per hour.

In its Proposal, the Commission estimated that each Swaps Entity would pay a registration fee of \$500 with its application. However, the Commission now believes that the registration fee will be \$15,000 per applicant. The difference is due to the detailed and in-depth review required of each Swaps Entity applicant's documentation, policies, and procedures to determine its initial compliance with the applicable substantive CEA Section 4s requirements, and their corresponding Section 4s Implementing Regulations, before the Commission grants the applicant registration. Because the \$15,000 registration fee still represents a very small percentage of a Swaps Entity's operational expenses, the Commission does not anticipate the registration fee will be a substantial inconvenience or burden to any Swaps Entity applicants.