

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0070

### Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was enacted.<sup>1</sup> Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”)<sup>2</sup> to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 727 of the Dodd-Frank Act specifically requires the Commodity Futures Trading Commission (“CFTC” or “Commission”) to establish certain standards for the real-time public reporting of swap transaction data. Part 43 of the Commission’s regulations imposes certain reporting, public dissemination, and timestamping requirements on the following entities that vary depending on the method of execution, underlying asset, and the counterparties to the swap: registered swap execution facilities (“SEFs”); designated contract markets (“DCMs”); registered swap data repositories (“SDRs”); major swap participants (“MSPs”); swap dealers (“SDs”); and non-SDs/non-MSPs.

This supporting statement concerns new collections of information required by these new regulations. The following new regulations would require collections of information:

- Section 43.3(a)(2) provides that for swaps executed on or pursuant to the rules of a SEF or DCM, a reporting party shall satisfy its reporting requirement by executing such publicly reportable swap transaction on or pursuant to the rules of the SEF or DCM. Additionally, § 43.3(a)(3) requires a reporting party in an off-facility swap (i.e., MSP, SD, or non-SD/non-MSP) to report the swap transaction and pricing data, “as soon as technologically practicable” after execution to an SDR that accepts and publicly disseminates such data. Upon receiving the swap transaction and pricing data, the SDR shall publicly disseminate the data “as soon as technologically practicable,” unless the publicly reportable swap transaction is subject to a time delay as described in § 43.5.
- Section 43.3(b)(1) provides that a SEF or DCM satisfies its public dissemination requirement by transmitting the swap transaction and pricing data to an SDR “as soon as technologically practicable” after it has been executed on such platform.
- Section 43.3(c)(3) requires an SDR that accepts and publicly disseminates swap transaction and pricing data in real-time to perform, on an annual basis, an independent review in accordance with established audit procedures and standards of the SDR’s

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<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. § 1 *et seq.*

security and other system controls for the purposes of ensuring compliance with the requirements in part 43.

- Section 43.4(b) requires an SDR that accepts and publicly disseminates data in real-time to only publicly disseminate the information described in appendix A to part 43. Appendix A to part 43 describes the data fields and format for public dissemination. Additionally, in publicly disseminating the swap data, the SDR must comply with §§ 43.4(g) and (h), which provide a rounding convention and notional caps for purposes of publicly disseminating the notional or principal amount for a publicly reportable swap transaction.
- Section 43.4(c) provides that an SDR that accepts and publicly disseminates swap transaction and pricing data in real-time may require reporting parties, SEFs and DCMs, to report to such SDR such information that is necessary to match the swap transaction and pricing data that was publicly disseminated in real-time and the data reported to a SDR pursuant to Section 2(a)(13)(G) of the Act or to confirm that the parties to a swap have reported “as soon as technologically practicable” pursuant to §43.3.
- Section 43.3(e)(1)(i) provides that if party to a swap becomes aware of an error or omission in the swap transaction and pricing data which it reported, it shall promptly notify the other party of the error and/or correction. Section 43.3(e)(1)(ii) requires that if a reporting party becomes aware of an error or omission in the data reported an SDR, either because it reported such data or a SEF or DCM reported it, the reporting party must promptly submit corrected data to the same SEF, DCM or SDR. Section 43.3(e)(1)(iii) states that if a SEF or DCM becomes aware of an error with respect to a swap it reported, or if it receives notice from the reporting party of an error, the SEF or DCM shall promptly submit corrected data to the registered SDR. Finally, §43.3(e)(1)(iv) requires an SDR to publicly disseminate any cancellations or corrections to such data, “as soon as technologically practicable” after receipt or discovery of any such cancellation or correction.
- Section 43.3(h) requires that, in addition to the execution time stamp required by appendix A to part 43, registered entities, swap dealers, and major swap participants shall record the following time stamps (to the nearest second):
  - A SEF or DCM: (i) the time it receives the data; and (ii) the time it transmits such data to a registered SDR for public dissemination;
  - An SDR: (i) the time it receives such data from a registered entity or reporting party; and (ii) the time it publicly disseminates such data; and
  - SD/MSP: the time it transmits such data to a registered SDR for public dissemination.

All such time stamps are required to be maintained for a period of at least 5 years from the execution of the publicly reportable swap transaction, pursuant to § 43.3(h)(4).

Estimated numbers of respondents and projected total annual responses and average number of hours per response are provided in Attachment A.

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 Commission's regulations require SEFs, DCMs and reporting parties to report swap transaction and pricing data to an SDR and for SDRs to ensure the dissemination of such data to the public. The Commission does not intend to collect this data. The Commission may, however, use the real-time swap transaction and pricing data in connection with an enforcement action against a reporting party, SEF, DCM or SDR. Additionally, the data reported to the SDRs for the purposes of part 43 may be used by the CFTC, SEC, Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency, Financial Stability Oversight Council, Securities and Exchange Commission, Department of Justice, and any other person the Commission determines to be appropriate, including foreign financial supervisors, foreign central banks, and foreign ministries as a variable in measuring systematic risk.

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.

This final rule contemplates the sole use of certain electronic collection protocols, such as e-mail and the Internet, for the public dissemination of real-time swap transaction and pricing data. The final rule does not include a requirement that a reporting party publish or maintain any related information or data on printed paper. Additionally, the final rule does not require reporting parties or registered entities to maintain records of real-time swap transaction and pricing data, with the exception of the requirement to maintain records of timestamps for a period of no less than five years.

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.

The type of information required to be reported under the Commission's regulations is not currently collected and is not available for public disclosure through any other source. Prior to the adoption of the Dodd-Frank Act, the Commission did not have the authority to require the real-time public reporting of swap transaction and pricing data. There are no existing regulations that could be modified to serve a similar purpose.

However, with respect to recordkeeping “collections of information,” the Commission believes that the recordkeeping provision in proposed § 43.3(i) were duplicative of recordkeeping requirements found in other proposed Commission regulations (e.g., part 45 and proposed part 23 recordkeeping requirements) and is therefore not adopting proposed § 43.3(i). Therefore, the Commission eliminated this provision to address commenters’ concerns relating to the cost burden of maintaining data beyond the data retained in the ordinary course of business and eliminated duplicative recordkeeping requirements.

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.

The Commission has established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the Regulatory Flexibility Act. None of the entities that are required to publish or accept real-time swap transaction and pricing data under this proposal include 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.

Section 727 of the Dodd-Frank Act provides that the purpose of the real-time public reporting requirement is to make swap transaction and pricing data available to the public to enhance price discovery. Without the frequency of reporting set forth in the Commission’s regulations, the general public would not receive swap transaction and pricing data (either in real-time or with a time delay), and thus, such data would not enhance price discovery as intended by the legislation.

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;

Real-time swap transaction and pricing data is not required to be reported to the Commission.

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

This does not apply

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

This does not apply.

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

All timestamps related to a reportable swap transaction shall be maintained for a period of not less than five years following the time at which such publicly reportable swap transaction is executed.

- 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 does not apply.

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

This does not apply.

- 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 does not apply.

- 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.

Section 8(a) of the CEA provides that, “unless specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” A number of narrow exceptions are set forth in Sections 8(b) and (e) of the CEA permitting the Commission to disclose “Section 8 material” for (i) prior public disclosures, (ii) congressional, administrative and/or judicial proceedings, (iii) other federal departments and agencies, individual states and foreign futures authorities, and (iv) registered entity investigations.

Additionally, section 2(a)(13)(E)(i) of the CEA provides that the rule promulgated by the Commission shall contain provisions “to ensure such information does not identify the participants[.]” Further, section 2(a)(13)(C)(iii) of the CEA provides “the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.” Accordingly, part 43 prohibits the disclosure of the names of the parties to a swap transaction when publicly disseminating swap

transaction and pricing data in real-time. Additionally, §§ 43.4(g) and (h) provide that the notional or principal amount of a swap will be rounded and capped when publicly disseminated to ensure the anonymity of the parties is not compromised.

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 C.F.R. 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.

On December 7, 2010, the Commission published proposed regulation titled “Real-Time Public Reporting of Swap Transaction Data” in the *Federal Register* (75 FR 76140). The release explicitly solicited comments to all aspects of the reporting and recordkeeping burdens imposed. In response, the Commission received two comments on its estimates regarding the reporting and recordkeeping burdens of the proposal.<sup>3</sup> One commenter, Dominion Resources, Inc. (“Dominion”), stated that the Commission’s estimates regarding end-user’s annual burden hours was “off by an order of magnitudes.” Dominion based this comment of its own experiences in building analogous systems. Dominion also expressed that the Commission only included burden hours, and not cost estimates, in the proposed regulation. Another commenter, the Global Foreign Exchange Division of SIFMA, AFME and ASIFMA, stated that when promulgating rules and estimating costs, the Commission should take into consideration “issues of scale in participants and volumes.”

In response to Dominion’s statement that the proposed regulation only provided hour burdens, and not cost burdens, the Commission notes that it stated in the Real-Time NPRM: “A copy of the supporting statement for the collections of information discussed above may be obtained by visiting RegInfo.gov.”

After consideration of the comments received and further discussions with the Commission’s technology experts, the Commission is retaining its estimates related to the reporting burdens for SEFs, DCMs, SDs and MSPs, but is revising its estimates as they relate to non-SDs/non-MSPs reporting burdens.<sup>4</sup> The Commission cannot estimate with precision the number of non-SDs/non-MSPs that will be obligated to report under this rule, how many will conduct their own reporting or contract with a third party, or how many transactions they will have to report. Moreover, there will be significant deviations in reporting burdens on a reporting party-by-reporting party basis, based upon the type and transactional activity of each individual reporting party.

Consequently, of the estimated 30,000 non-SDs/non-MSPs who will transact in the swaps markets, the Commission is estimating that only 1,000 non-SDs/non-MSPs will be required to report annually because of part 43. Of those 1,000 non-SDs/non-MSPs, the Commission

<sup>3</sup> The Commission also received a comment from OMB which took the form of a “Notice of Action.”

<sup>4</sup> The term “non-SDs/non-MSPs” includes those parties characterized as “end-users” in the Proposing Release.

continues to believe a majority, estimated now at 75%, will contract with third parties to satisfy their reporting obligations. For those non-SDs/non-MSPs who are required to report swap transaction and pricing data to an SDR and contract with a third party, the Commission estimates that such non-SDs/non-MSPs will expend 22 annual burden hours per reporting party or entity. Thus, the Commission estimates that 750 non-SDs/non-MSPs will expend a total of 16,500 aggregate annual burden hours complying with the reporting requirements.

Conversely, for the 250 non-SDs/non-MSPs that the Commission estimates will not contract with a third party, the Commission estimates such non-SDs/non-MSPs will expend 676 annual burden hours per reporting party or entity, for a total of 169,000 aggregate annual burden hours.

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.

A joint public roundtable (coordinated with the SEC) was held on September 14, 2010 at the CFTC's headquarters where representatives from affected sectors of the swap markets were asked questions and were able to provide answers to those questions. Specifically, the September 14 roundtable addressed real-time public reporting, data and recordkeeping and SDRs. The public transcript of these roundtable discussions is available on the Commission's Internet web site at:

<http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf>.

In addition, in advance of the publication of the regulation the Commission solicited comments from the public on its Internet web site. The Commission asked for comments regarding its reporting and recordkeeping estimates: "The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. § 3506(c)(2)(B), the Commission requests comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology."<sup>5</sup> The Commission received no comments which provided quantitative data regarding the burden hours or costs which would be imposed as a result of this rule.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be

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<sup>5</sup> See 75 FR 76170.

circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

As part of the rulemaking process, the Commission met with representatives of financial banking firms, risk analysts, attorneys, trade associations, and other regulators. The Commission expects these efforts to continue as swap transaction reporting is implemented following the publication of final rules for the public reporting of real-time swap transaction and pricing data.

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.

See the response to Question 7. Section 8(a) of the CEA generally prohibits the Commission from separately disclosing the “business transactions or market positions of any person and trade secrets or names of customers.” The Commission also has adopted Freedom of Information Act regulations, 17 C.F.R. Part 145 which implements the federal statute set forth in 5 U.S.C. §552, including exemptions to disclosure which permit a federal agency to withhold information prohibited from disclosure by another statute. See 5 U.S.C. § 552(b)(3) and Commission Regulation 145.5(c), 17 C.F.R. § 145(c).

Additionally, section 2(a)(13)(E)(i) of the CEA provides that the rule promulgated by the Commission shall contain provisions “to ensure such information does not identify the participants[.]” Further, section 2(a)(13)(C)(iii) of the CEA provides “the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person. Accordingly, part 43 prohibits the disclosure of the names of the parties to a swap transaction when publicly disseminating swap transaction and pricing data in real-time. Additionally, §§ 43.4(g) and (h) provides that the notional or principal amount of a swap will be rounded and capped when publicly disseminated to ensure the anonymity of the parties is not compromised.

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.

The regulations covered by the collections do not require the giving 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. In calculating the cost figures in Attachment A, the Commission based its calculations on an hourly mixed wage rate<sup>6</sup> to comply with the proposed regulations.

<sup>6</sup> In so doing, the Commission at times has utilized wage rate estimates based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”). These wage estimates are derived from an industry-wide survey of participants and thus reflect an average across entities; the Commission notes that the actual costs for any individual company or sector may vary from the average.

The Commission estimated the dollar costs of hourly burdens for each type of professional using the following calculations:

[(2009 salary + bonus) \* (salary growth per professional type, 2009-2010)] = Estimated 2010 total annual compensation.] The most recent data provided by the SIFMA report describe the 2009 total compensation (salary + bonus) by professional type, the growth in base salary from 2009 to 2010 for each professional type, and the 2010 base salary for each professional type; thus, the Commission estimated the 2010 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2010 to 2011 and beyond, did not estimate dollar costs beyond 2010.

[(Estimated 2010 total annual compensation) / (1,800 annual work hours)] = Hourly wage per professional type.]

[Hourly wage) \* (Adjustment factor for overhead and other benefits, which the Commission has estimated to be 1.3)] = Adjusted hourly wage per professional type.]

[(Adjusted hourly wage) \* (Estimated hour burden for compliance)] = Dollar cost of compliance for each hour burden estimate per professional type.]

The sum of each of these calculations for all professional types involved in compliance with a given element of the final rule represents the total cost for each reporting party, SD, MSP, SEF, DCM, or SDR, as applicable to that element of the final rule.

Additionally, in determining the burden hours for SDs, MSPs, SEFs, DCMs, non-SDs/non-MSPs, and SDRs, the Commission differentiated between those persons who are expected to have higher levels of swap reporting activity versus those entities or persons who will have lower levels of swap reporting activity. For this purpose, the Commission estimates that “high activity” entities or persons are those who process or enter into hundreds or thousands of swaps per week that are subject to the Commission’s jurisdiction. Low activity users would be those who process or enter into substantially fewer swaps than the high activity users. The Commission requested comments on its estimate.

“High activity” persons or entities are MSPs, SDs, DCMs, or SEFs. For purposes of this regulation, the Commission estimates that their average annual burden may be approximately 2,080 hours.<sup>7</sup> “Low activity” persons or entities are end-users or other non-SD/MSP reporting counterparties who would be required to report. Of the estimated 1,000 non-SDs/non-MSPs, the Commission continues to believe a majority, estimated now at 75%, will contract with third parties to satisfy their reporting obligations. For those non-SDs/non-MSPs who are required to report swap transaction and pricing data to an SDR that decide to contract with a third party to fulfill the reporting obligations, the Commission estimates that such non-SDs/non-MSPs will expend 22 annual burden hours per reporting party or entity. Conversely, for the 250 non-SDs/non-MSPs that the Commission estimates will not contract with a third party to fulfill the reporting obligations, the Commission estimates such non-SDs/non-MSPs will expend 676 annual burden hours per reporting party or entity.

Additionally, SDRs will be required to be open and operating 24 hours a day, 7 days a week. In light of that expectation, the Commission estimates the burden hours associated with their public dissemination duties to be 6,900 burden hours annually.

To determine the total cost imposed by this regulation, the Commission summed the appropriate estimated aggregate total cost from the reporting and public dissemination table with the total aggregate cost to perform the timestamping function in the “Recordkeeping” table. The estimated total cost imposed by this regulation is \$150,017,837.00.<sup>8</sup>

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

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<sup>7</sup> The Commission estimated 2,080 hours by assuming that a significant number of SEFs, DCMs, MSP, and SDs will dedicate the equivalent of least one full-time employee to ensuring compliance with the reporting obligations of Regulation 45.3 (2,080 hours = 52 weeks × 5 days × 8 hours). The Commission believes that this is a reasonable assumption due to the volume of swap transactions that will be processed by these entities, the varied nature of the information required to be reported by part 43, and the frequency (daily) with which some reports must be made. The Commission requested comment on its estimates in its previous submission.

<sup>8</sup> \$150,017,837.00 (total) = \$ 23,349,065 (SDRs) + \$54,219,383 (SDs and MSPs) + \$17,402,682 (SEFs) + \$7,831,207 (DCMs) + \$45,159,000 (Reporting Party Non-SD/non-MSP) + \$2,056,500 (Reporting Party non-SD/non-MSP who contracts with third party).

- 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.

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 Commission will have the following cost drivers relating to the information collections required by part 43 of the Commission's regulations: (1) Reviewing whether or not parties are complying with part 43's real-time reporting rules. This would include reviewing timestamp data from registered entities and reporting parties, and also coordinating with SDRs to ensure that they are receiving the appropriate data to publicly disseminate from reporting parties; (2) Costs relating to ensuring the Commission have the ability to analyze and assess the real-time public reporting's effect on various markets, including the effect on trade execution and market liquidity.

With respect to the Commission staff analyzing and reviewing the collected data/information, particularly with respect to the timestamps and to ensure compliance with the regulation, existing staff may be used to some extent to perform this function. However, the Commission anticipates additional staff will be necessary.

Accordingly, the Commission estimates that at least two (2) new employees will be hired to build the necessary technology. After the first year, however, one (1) employee, with technology expertise, will be required to be retained to maintain the technology systems. The Commission estimates that each of these employees will cost approximately \$250,000 per year. Therefore, for the first year the cost to the Commission will be \$500,000, and every year after that the cost of personnel will be \$250,000.

The Commission also estimates that the Division of Market Oversight will hire 2-5 new employees who will be dedicated full-time to analysis of the information/real-time data being collected. The estimated annual cost to the Commission per new hire in DMO is \$120,000.<sup>9</sup> Therefore, the total annual aggregate cost to the Commission is estimated to be between \$240,000 and \$600,000.

With respect to the additional technology necessary for the Commission to receive and process the information collected, Commission staff estimates the additional cost of this technology to be *de minimis* because the Commission anticipates leveraging off its existing infrastructure to satisfy its additional responsibilities.<sup>10</sup>

Therefore, the total cost (new staff plus technology) is estimated to be between \$740,000 and \$1,100,000 for the first year after the rule is finalized, and between \$490,000 and \$850,000 annually every year after the first year plus some additional *de minimis* costs for technology infrastructure.

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

These are new collections and the question, therefore, this question does not apply.

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.

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<sup>9</sup> This figure is a composite of the salaries for economists (Grade 11-13) and attorneys (Grade 11-14) in the Commission's Division of Market Oversight. In obtaining the composite, Commission staff used the CFTC 2010 Washington Pay Chart (with adjusted locality pay).

<sup>10</sup> This number was obtained in consultation with CFTC's Information Technology staff.

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.

No exceptions exist.

**Attachment A**

**Real-time Public Reporting under Section 727 of the Dodd-Frank Act  
Estimated Annual Hour and Cost Burden of the Collection of Information**

**Reporting and Public Dissemination**

| Est'd # of Covered Entities (a) <sup>11</sup> | Est'd Avg. # of Hrs. to Report per entity (b) <sup>12</sup> | Est'd Total Annual Burden Hrs. (a)x(b) | Est'd Cost for Burden Hours ((a)x(b)) x \$(Wage Rate) <sup>13</sup> | Est'd Capital and Start-up Costs per entity (\$) <sup>14</sup> | Useful Life (year) | Capital Start up cost annualized over useful life per entity | Est'd Avg. Total Operational Cost per year per entity (\$) <sup>15</sup> | Est'd Annual Total Cost per entity (\$) | Estimated aggregate annual cost for Reporting or Public Dissemination (\$) |
|---|---|--|---|--|--------------------|--|--|---|--|
| 15 SDRs                                       | 6,900 <sup>16</sup>   | 103,500                                | \$20,255,210  | \$300,000  | 6                  | \$50,000   | \$150,000  | \$200,000                               | \$23,255,210   |
| 125 <sup>17</sup>                             | 2,080   | 260,000                                | \$28,891,383  | \$300,000  | 6                  | \$50,000   | \$150,000  | \$200,000                               | \$53,891,383   |

<sup>11</sup> For purposes of the Paperwork Reduction Act, the Commission estimates that there will be 15 SDRs, 125 SDs and MSPs, 40 SEFs, 18 DCMs and 1,000 end users who would annually be subject to the reporting and recordkeeping requirements of part 43. The Commission requested comment on its estimate when it submitted the supporting statement during the Real-Time NPRM phase.

<sup>12</sup> Estimates exclude hours devoted to customary and usual business practices. Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate.

<sup>13</sup> See *supra* note 6 for wage rate methodology. For MSPs, SDs, SEFs, and DCMs, and reporting non-SDs/MSPs, this estimate includes \$100,000 per reporting entity associated with the recurring technological costs of maintaining connectivity to an SDR.

<sup>14</sup> The capital and start up cost for part 43's requirements for high activity respondents was estimated as 5% of the entities' estimated average total capital and start up cost, \$6 million.

<sup>15</sup> The Estimated Average Total Operational Cost Per Year Per Entity are estimated to be 50% of the capital and start up cost.

|   |                  |         |                            |                        |   |          |           |           |              |
|---|------------------|---------|----------------------------|------------------------|---|----------|-----------|-----------|--------------|
| SDs/MS<br>Ps  |                  |         |                            |                        |   |          |           |           |              |
| 40 SEFs   | 2,080            | 83,200  | \$9,245,242                | \$300,000              | 6 | \$50,000 | \$150,000 | \$200,000 | \$17,245,242 |
| 18DCMs <sup>18</sup>  | 2,080            | 37,440  | \$4,160,359                | \$300,000              | 6 | \$50,000 | \$150,000 | \$200,000 | \$7,760,359  |
| 250 RP<br>non-<br>SDs/non<br>-MSPs  | 676              | 169,000 | \$35,764,000 <sup>19</sup> | \$56,369 <sup>20</sup> | 6 | \$9,395  | \$28,185  | \$37,580  | \$45,159,000 |
| 750 RP<br>non-<br>SDs/non<br>-MSPs<br>who<br>contract<br>with a<br>third<br>party <sup>21</sup> | 22 <sup>22</sup> | 16,500  | \$1,024,500                | \$2,063                | 6 | \$344    | \$1,032   | \$1,376   | \$2,056,500  |

<sup>16</sup> Registered SDRs that accept and publicly disseminate swap transaction and pricing data in real shall maintain hours of operation to receive and publicly disseminate swap transaction and pricing data at all times, twenty-four hours a day, with some leeway allowed for closing due to system maintenance.

<sup>17</sup> In its Proposal, the Commission estimated that as many as 250 SDs and 50 MSPs would register. After recently receiving additional information, particularly a letter from Thomas Sexton, NFA Senior Vice President and General Counsel to Gary Barnett, Director of the Division of Swap Dealer and Intermediary Oversight, the Commission is revising its estimate downward. Accordingly, the Commission now believes that approximately 125 Swaps Entities (i.e. SDs and MSPs), including only a handful of MSPs, will register with the Commission as SDs or MSPs.

<sup>18</sup> This number of DCMs was changed from 17 to 18 to reflect the designation of one more contract market since the publication of the Real-Time NPRM in the Federal Register. As of December 13, 2011. See <http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations&implicit=true&type=DCM&CustomColumnDisplay=TTTTTTTTT>.

<sup>19</sup> See *supra* note 12. This cost estimate includes the recurring costs of capturing swap transaction and pricing data, maintenance of compliance and operational support programs, and of complying with error and omission requirements and maintaining error and omission reporting systems. This estimate also includes the cost of maintaining connectivity to an SDR, which the Commission estimates to be \$100,000 per year.

<sup>20</sup> This cost estimate includes the non-recurring costs of developing an internal order management system (OMS), of establishing connectivity with an SDR, of developing written policies and procedures related to compliance with part 43's reporting requirements, and of establishing a program for reporting errors and omissions.

Estimated Total Annual Burden Hours: 669,640

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<sup>21</sup> This estimate does not include the costs associated with the fees likely to be charged to a reporting non-SD/non-MSP by a third party to report swap data to an SDR. The identity of such third parties, the composition of the marketplace for third party services, and the costs charged by third parties to provide reporting services - given the economies of scale and scope such third parties may realize in providing these reporting services - are all presently unknowable. Therefore, the Commission does not believe it is feasible to quantify the fees charged by third parties to non-SD/MSPs at the present time.

<sup>22</sup> This estimate reflects the hour burdens to a non-SD/non-MSP who contracts with a third party to comply with part 43's requirements regarding reporting errors and omissions in the swap data that is publicly disseminated.



**Real-time Public Reporting under Section 727 of the Dodd-Frank Act  
Estimated Annual Hour and Cost Burden of the Collection of Information**

**Recordkeeping (Timestamping)**

| Est'd # of Covered Entities (a) <sup>23</sup> | Est'd Avg. # of Hrs. to Report per entity (b) | Est'd Total Annual Burden Hrs. (a)x(b) | Total Aggregate cost to perform recordkeeping function (x Wage Rate) <sup>24</sup> |
|---|---|--|--|
| 15 SDRs                                       | 76  | 1,140                                  | \$93,855   |
| 125 SDs/MSPs                                  | 30  | 3,750                                  | \$328,000  |
| 40 SEFs                                       | 45  | 1,800                                  | \$157,440  |
| 18 <sup>25</sup> DCMs                         | 45  | 810                                    | \$70,848   |
| 30,000 Non-SDs/non-MSPs                       | NA  | NA                                     | NA   |

**Estimated Total Annual Burden Hours:        7,500**

<sup>23</sup> For purposes of the Paperwork Reduction Act, the Commission estimates that there would be 15 SDRs, 125 SDs and MSPs, 40 SEFs, and 18 DCMs who would annually be subject to the recordkeeping (timestamping) requirements of part 43. Non-SDs/non-MSPs have no timestamping requirement.

<sup>24</sup> See supra note 6.

<sup>25</sup> The number of DCMs was changed from 17 to 18 to reflect the designation of one more contract market since the publication of the Real-Time NPRM in the Federal Register. As of December 13, 2011. See <http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations&implicit=true&type=DCM&CustomColumnDisplay=TTTTTTTT>.

