

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

Clearing Exemption for Swaps Between Certain Affiliated Entities

**OMB CONTROL NUMBER 3038-[NEW]**

**“Rule 39.6(g) Affiliate Transaction Uncleared Swap Notification”**

**Justification**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section 2(h)(1)(A) of the Commodity Exchange Act (“CEA”) makes it unlawful for any person to engage in a swap if the Commission determines such swap is required to be cleared, unless that person submits the swap for clearing to a registered derivatives clearing organization. 7 U.S.C. 2(h)(1)(A). By exercising its general exemptive authority in CEA section 4(c)(1), the Commission is proposing to exempt from the statutory clearing requirement swap transactions between certain affiliated entities within a corporate group (“inter-affiliate swaps”), subject to certain conditions.<sup>1</sup> 7 U.S.C. 6(c). To that end, the Commission has proposed a new Rule 39.6(g) containing the elective exemption and outlining the conditions entities must satisfy in order to rely upon it. These conditions are designed to address Commission concerns regarding inter-affiliate swap risk and to provide the Commission with information necessary to regulate swaps markets.

Among the conditions of the proposed exemption is a notification and reporting requirement. By electing the proposed exemption, affiliated entities would be transacting uncleared swaps, transactions which CEA section 4r requires be reported to a swap data repository (“SDR”), or to the Commission if no SDR will accept such information. 7 U.S.C. 6r. Proposed rule 39.6(g)(4) implements the reporting requirement in CEA section 4r for these uncleared inter-affiliate swaps and specifies the exact information that must be reported. CEA section 2(j) further requires issuers of securities under section 12 of the Securities Exchange Act of 1934 (“Exchange Act”) or required to file reports under Exchange Act section 15(d) (“SEC Filers”) electing exemptions from the clearing requirement in CEA section 2(h) to first have an appropriate committee of the issuer’s board or governing body review and approve its decision to enter into uncleared swaps. 7 U.S.C. 2(j). Specifically, proposed rule 39.6(g)(4)(iii) would

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<sup>1</sup> The Commission notes also that other elective exceptions to the clearing requirement are created and contemplated by the CEA, as amended by the Dodd-Frank Act. *See, e.g.*, CEA sections 2(h)(7)(A) (clearing exception for non-financial entities, commonly known as the “end-user exception”), 2(h)(7)(D) (extension of the end-user exception to qualifying affiliates), and 2(h)(7)(C)(iii) (requiring the Commission to consider whether to exempt certain small banks, savings associations, farm credit institutions, and credit unions from the clearing requirement). The Commission is proposing to develop and finalize those exceptions in separate rulemakings.

implement CEA section 2(j) and collect information from SEC Filers necessary to satisfy that requirement. Additionally, proposed rule 39.6(g)(5) would allow entities to submit some information, including the information required by CEA section 2(j), on an annual basis, as opposed to submitting identical information with each qualifying inter-affiliate swap.

**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 data would be collected either by SDRs or by the Commission directly. The Commission would use the data to monitor use of the proposed exemption by qualifying affiliates, to analyze the risk characteristics of uncleared swaps generally, and to enhance the Commission's ability to identify and reduce potential systemic 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.**

The Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. Information may be submitted electronically to an SDR or the Commission directly. The Commission anticipates that nearly 100% of the collection of information would 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.**

The required information is not available from any other source.

**5. If the collection of information involves small business or other small entities (Item 5 of OMB From 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.

**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 or was conducted less frequently, the Commission's ability to monitor and enforce the conditions set forth in the proposed exemption would be hindered. The Commission would be unable to ensure that only affiliates meeting the specified conditions elect the proposed exemption, and the Commission's ability to evaluate the risks of, and monitor the use of uncleared inter-affiliate swaps would be hindered. In addition, failure to obtain the subject information would adversely affect the Commission's ability to ensure the entities' compliance with their obligations under

the CEA and Commission regulations related to clearing requirements. The integrity and efficiency of the swap markets would be adversely affected because the information collection allows entities to be exempt from the clearing requirements. The information collection cannot be conducted less frequently without compromising the accuracy and timeliness of the data.

**7. Explain any special circumstances that require the collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**

The reporting counterparty would have to report the information required in proposed § 39.6(g)(4)(i) for each swap. It would also have to report the information required in proposed §§ 39.6(g)(4)(ii)-(iii) for each swap if no annual report had been filed. However, the Commission has given respondents the option to report the same information on an annual basis instead. The Commission anticipates that 90% of entities would choose to report annually.

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

The reporting counterparty would have to report the information required in proposed § 39.6(g)(4)(i) for each swap. It would also have to report the information required in proposed §§ 39.6(g)(4)(ii)-(iii) for each swap if no annual report had been filed. However, the Commission has given respondents the option to report the same information on an annual basis instead. The Commission anticipates that 90% of entities would choose to report annually.

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

The proposed exemption does not impose any requirements that would obligate an applicant to submit more than an original and two copies of any document.

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

The proposed exemption does not impose any recordkeeping requirements.

- **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;**

The proposed exemption does not require nor involve any statistical surveys.

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

The proposed exemption does not require nor involve the use of any statistical data classification.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

The proposed exemption does not require a pledge of confidentiality.

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The proposed exemption does not specifically require any person to submit data involving confidential information or trade secrets. To the extent that any information submitted by a person were to involve confidential information or proprietary trade secrets, the Commission would protect such information in accordance with the Freedom of Information Act and 17 CFR Part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a) 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." In addition, the Commission also is required to protect certain information pursuant to the Privacy Act of 1974.

**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 is affirmatively seeking comment from the public on the proposed collection of information. A copy of the proposed exemption has been submitted to the Federal Register for publication and public comment.

**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.

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

No such circumstances are anticipated.

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

This question does not apply.

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

As noted in the response to Question 7, the Commission will protect proprietary information according to the Freedom of Information Act and the regulations that the Commission has promulgated to protect the confidentiality of collected information contained in 17 CFR 145, "Commission Records and Information." In addition, section 8(a) of the CEA provides for the confidentiality of data and information, except under the limited circumstances delineated therein. The Commission also is required to protect certain information pursuant to the Privacy Act of 1974.

**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 proposed exemption does 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. The Commission estimates that 53,195 respondents will file a total of 64,769,983 responses annually. See Attachment A at p.1. The estimated average number of hours required to report each inter-affiliate swap is .03 (1.8 minutes). See Attachment A at p.1. The cost of the hourly burden per inter-affiliate swap is estimated to be \$10.58. See Attachment A, Table D.

**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.**

There is a one-time, start-up cost total for all MNCs of \$3,300,880 to comply with the proposed rule. See Attachment A, Table C.

**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 primary costs for reviewing and analyzing documents under the new information collections are the salaries and benefits of CFTC staff attorneys. The Commission estimates the costs to the Federal Government as follows:

The Commission anticipates it will probably analyze about 10% of annual reports received under this collection of information (1,760 reports received annually, 176 reports reviewed). The average time for analyzing an annual report may be 1 hour, most likely at the CT-12 level, resulting in an aggregate annual hourly burden of 176 hours. The total aggregate cost to review and analyze 10% of the annual reports each year is estimated at \$11,968.<sup>2</sup>

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

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.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

This question does not apply.

**18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

This question does not apply.

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<sup>2</sup> The total annual aggregate cost to review 10% (approximately 176) of the annual reports received by the Commission is estimated at \$11,968, as follows:

Using the average salary (base plus locality pay) for the CT-12 pay grade for Commission employees in Washington, D.C. as of July 27, 2012, approximately \$110,906, multiplied by 1.271 to account for benefits, the annual cost to the Commission for each CT-12 employee would be \$140,962. Based on a work year for all Federal employees of 2,087 hours, or an hourly wage for a CT-12 employee of \$68.00, the Commission estimates annual costs to review annual reports of \$11,968 (176 hours x \$68.00).

**Attachment A**

**Rule 39.6(g) – Affiliate Transaction Uncleared Swap Notification**

**OMB Collection File 3038-[NEW]**

Number of Respondents	53,195 (See Table A)
Number of Responses	64,769,983 (64,768,399 + 1,584) (See Table A)
Estimated Average Hours Per Inter-Affiliate Swap	.03 (1.8 minutes)
Frequency of Reporting	On Occasion (at the beginning of each inter-affiliate swap), and Annual (if entity elects to file Annual Report under proposed rule 39.6(g)(5))

**Table A. Multinational Corporation (MNC), Affiliate, and Inter-Affiliate Swap Estimates.**

Number of MNCs	2,347
Number of Subsidiaries per MNC	22 <sup>3</sup>
Total Number of Subsidiaries	50,848
Total Number of Affiliates Potentially Electing the Proposed Exemption	53,195 [50,848 + 2,347]
Estimated Number of MNCs Subject to Proposed Reporting Requirements	1,760 [2,347 x 75%]
Estimated Number of Reporting MNCs that Would File Annual Reports <sup>4</sup>	1,584 [1,760 x 90%]
Average Annual Number of Inter-Affiliate Swaps per Affiliate	2,230
Total Annual Number of Inter-Affiliate Swaps	64,768,399 <sup>5</sup>

<sup>3</sup> Dividing the total number of subsidiaries (50,848) by the number of MNCs (2,347) results in approximately 21.66 subsidiaries per MNC. This figure has been rounded to the next whole number for purposes of these calculations.

<sup>4</sup> The Commission assumed that at least 90% of MNCs would elect to file annual reports, see further discussion below.

<sup>5</sup> The Total Annual Number of Inter-Affiliate Swaps is the total number of inter-affiliate swaps that MNCs, U.S. subsidiaries, and foreign subsidiaries entered into that would be subject to this rule. The total number of inter-affiliate swaps that MNC's entered into that would be subject to this rule is the number of MNCs (2,347) times the number of swaps per MNC (2,230) times 75%, or  $0.75 \times 2,347 \times 2,230$ . The total number of inter-affiliate swaps that U.S. subsidiaries entered into that would be subject to this rule is  $10 \times (0.75 \times 2,230 \times 2,347)$ . There are 11 U.S. subsidiaries per MNC and each subsidiary enters into as many as swaps as each MNC, on average. However, 1 of the U.S. subsidiaries is the treasury/conduit affiliate and it enters into swaps with every other affiliate, including foreign affiliates. To avoid double counting, that subsidiary is removed from the equation and the number of U.S. subsidiaries is 10. Finally, the total number of inter-affiliate swaps that foreign subsidiaries entered into that would be subject to this rule is  $0.5 \times (11 \times 0.75 \times 2,230 \times 2,347)$ . Each foreign subsidiary enters into as many swaps as each U.S. subsidiary, but only 50% of foreign subsidiary swaps would be subject to this rule.



**Table B. Burden and Cost Estimates of Proposed Rule 39.6(g)(4) (Reporting Requirement).**

<b>Proposed Regulation/ Requirement Description</b>	<b>Average Burden Hours Per Transaction</b>	<b>Average Cost Per Transaction<sup>6</sup></b>	<b>Total Average Annual Burden Hours</b>	<b>Total Average Annual Cost</b>
§ 39.6(g)(4)(i)	0.019 hours (1.14 minutes)	\$7.41	1,230,600 [64,768,399 x .019]	\$ 479,933,837  [64,768,399 x \$7.41] <sup>7</sup>

<sup>6</sup> Annual hour or cost burden estimates of the proposed exemption were calculated, through research and through consultation with the Commission's technology staff, using 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:

(1) [(2010 salary + bonus) \* (salary growth per professional type, 2010-2011)] = Estimated 2011 annual compensation. The most recent data provided by the SIFMA report describe the 2010 total compensation (salary + bonus) by professional type, and the 2011 base salary for each professional type; thus, the Commission estimated the 2011 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2011 to 2012 and beyond, did not estimate dollar costs beyond 2011.

(2) [(Estimated 2011 total annual compensation)/(1,800 annual work hours)] = Hourly wage per professional type.

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

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

<sup>7</sup> To derive the annual burden hours and cost for this row, the Commission calculated following: the average burden hours or cost per transaction times total number of inter-affiliate swaps annually.

**Table B. Burden and Cost Estimates of Proposed Rule 39.6(g)(4) (Reporting Requirement)  
(Continued).**

§§ 39.6(g)(4)(ii)-(iii) (costs incurred if no annual report filed under § 39.6(g)(5) <sup>8</sup> )	<b>First Transaction:</b> 0.17 hours(10 minutes)	\$65.00	648 [(50,848 x 75% x 10% x 0.17]	\$247,884 [(50,848 x 75%) x 10% x \$65] <sup>9</sup>
	<b>SubsequenTrans actions:</b> 0.05 hours(3 minutes)	\$19.50	323,651 [(64,768,399 – 50,848 x 75%) x 10% x .05]	\$126,224,013 [(64,768,399- 50,848 x 75%) x 10% x \$19.50] <sup>10</sup>

<sup>8</sup> The Commission assumes that at least 90% of corporations would elect to file an annual report to supply the information required by proposed § 39.6(g)(4)(ii)-(iii) rather than report the information on a swap-by-swap basis; 10% of affiliates would report the required information on a swap-by-swap basis.

<sup>9</sup> To derive the annual burden hours and cost for this row, the Commission calculated following: (A) the total number of subsidiaries (see Table A) times 75% to determine the number of affiliates involved in a first transaction subject to reporting; (B) then multiplied that number—38,136—with 10% to determine the number of affiliates that would report swap-by-swap, *i.e.*, 3,813.6, and (C) then multiplied that number by 0.16667 (rounded up to 1.17 in the Table), to obtain the average burden hours to report, or \$65, to obtain the average cost to report.

<sup>10</sup> To derive the annual burden hours and cost for this row, the Commission calculated following: (A) the total number of subsequent transactions, which is the total number of transactions (64,768,399) minus the total number of first time transactions (0.75 x 50,848); (B) then multiplied that number—64,730,263—by 10% to determine the number of affiliates that would report swap-by-swap, *i.e.*, 6,473,263, and (C) then multiplied that number by 0.05, to obtain the average burden hours to report, or \$19.50, to obtain the average cost to report.

**Table C. Other Burdens and Costs to Reporting and Non-Reporting Affiliates (including optional Annual Report in Proposed Rule 39.6(g)(5)).**

Proposed Regulation/Requirement Description	Average Burden Hours Per Affiliate	Average Cost Per Affiliate	Total Average Annual Burden Hours	Total Average Annual Cost
Modifying Reporting System (One-time cost) <sup>11</sup>	5.5 hours	\$1,875.50	9,680 [5.5 x 1,760]	\$3,300,880 [\$1,875.50 x 1,760] <sup>12</sup>
Burden on Non-Reporting Affiliates	5.04 hours	\$1,966.25	192,205 [5.04 x 38,136]	\$74,984,910 [\$1,966.25 x 38,136] <sup>13</sup>
Proposed § 39.6(g)(5) Annual Report	1 hour	\$390.00	1,584 [(1,760 x 90%) x 1] <sup>14</sup>	\$617,760 [\$390 x 1,760 * 90%]

**Table D. Average Annual Burden and Cost Estimates of the Proposed Exemption.**

	Burden Hours	Cost of Proposed Exemption
<b>Total<sup>15</sup></b>	1,758,369	\$685,309,284
<b>Total Average Annual per MNC<sup>16</sup></b>	999	\$389,380
<b>Total Average Annual per Affiliate<sup>17</sup></b>	46	\$17,970
<b>Total Average per</b>	0.03	\$10.58 <sup>19</sup>

<sup>11</sup> The Commission assumes that there is only one reporting counterparty at each MNC.

<sup>12</sup> 1,760 represents the 75% of 2,347 MNCs that the Commission estimates would be reporting parties.

<sup>13</sup> 38,136 represents 75% of 50,848, the total number of affiliates potentially electing the proposed exemption.

<sup>14</sup> This calculation represents the total burden hours —1,584.2—for the estimated 90% of reporting MNCs that would file annual reports.

<sup>15</sup> These numbers are obtained by adding all of the burden hours or costs in Tables B and C. The number—\$685,309,281, in the Federal Register release, 77 FR 50425 at 50441 (at Table D, and narrative) is incorrect as a result of a typo.

<sup>16</sup> Total Hours or Costs divided by 1,760 MNCs, which is equal to 75% x 2,347.

<sup>17</sup> Total Hours or Costs divided by 38,136 affiliates, which is equal to 75% x 50,848.

<sup>18</sup> Total Hours or Costs per Affiliate divided by 64,768,399 inter-affiliate swaps.

<sup>19</sup> The “Total Average Per Inter-Affiliate Swap” cost of \$10.58 is less than the average transaction costs listed in Table B (i.e., \$65.00 and \$19.50) for two reasons. First, \$10.58 is the average cost for over 64 million inter-affiliate swaps – this includes determining how much one-time or annual costs increase the reporting costs per inter-affiliate swap. Second, the “average total transaction costs” in Table B apply only to the ten percent (10%) of reporting counterparties that might choose to report on a swap-by-swap

<b>Inter-Affiliate Swap<sup>18</sup></b>	(1.8 minutes)	
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basis under proposed §§ 39.6(g)(4)(ii)-(iii).