

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0081

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.
 - a. Section 725(b) of the Dodd-Frank Act amended Section 5b of the Commodity Exchange Act (“CEA”) (7 U.S.C. 7a-1(a)) to require a derivatives clearing organization (“DCO”) to designate an individual as a chief compliance officer (“CCO”) who will be responsible for filing an annual report that describes the DCO’s compliance activities. Accordingly, the Commission has published regulations that would require the appointment of a CCO, the filing of an annual report and adherence to certain recordkeeping requirements. The information that would be collected is necessary for the Commission to evaluate the performance of the CCO and whether DCOs are complying with Commission regulations.
 - b. The Commission now is proposing regulations to establish additional standards for compliance with the DCO core principles set forth in section 5b(c)(2) of the CEA¹ that would be applicable to systemically important DCOs (“SIDCOs”)² and to DCOs that elect to opt-in to the enhanced regulatory requirements applicable to SIDCOs (“Subpart C DCOs”) which comport with certain international standards (“SIDCO/Subpart C DCO Regulations”).

Section 805 of the Dodd-Frank Act directs the Commission to consider relevant international standards and existing prudential requirements when prescribing risk management standards governing the operations related to payment clearing, and settlement activities for FMUs that are: (1) designated as systemically important by the Council and (2) engaged in activities for which the Commission is the Supervisory Agency.³ More generally, section 752 of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities on the

¹7 U.S.C. 7a-1(c)(2)(A). Section 725(c) of the Dodd-Frank Act amended Section 5b(c)(2) of the CEA which sets forth the core principles with which a DCO must comply in order to register and maintain registration with the Commission. In furtherance of the goals of the Dodd-Frank Act to reduce risk, increase transparency and promote market integrity, the Commission, pursuant to its enhanced rulemaking authority under section 725(c)(2)(i) of the Dodd-Frank Act, adopted regulations establishing standards for compliance with the DCO core principles.

² Section 804 of the Dodd-Frank Act requires the Financial Stability Oversight Council (“Council”) to designate those financial market utilities (“FMUs”) that the Council determines are, or are likely to become, systemically important. Title VIII of the Dodd-Frank Act was enacted to mitigate systemic risk in the financial system and to promote financial stability.

³ Certain FMUs that have been designated by the Council as systemically important under Title VIII of the Dodd-Frank Act are CFTC-registered DCOs for which the Commission is the Supervisory Agency.

establishment of consistent international standards with respect to the regulation of, among other things, swaps, futures, and options transactions.

Consistent with these statutory directives, the Commission previously finalized enhanced financial resource and system safeguard requirements applicable to SIDCOs in a manner consistent with the Principles for Financial Market Infrastructures (“PFMIs”) published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions (“CPSS-IOSCO”).⁴ The additional requirements contained in this proposal would address any remaining gaps between the Commission’s existing regulations and the PFMIs.

In addition, the Basel Committee on Banking Supervision (“BCBS”), the international body that sets standards for the regulation of banks, has published the “Capital Requirements for Bank Exposures to Central Counterparties” (“Basel CCP Capital Requirements”), which set forth interim rules governing the capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives and securities financing transactions. The Basel CCP Capital Requirements create financial incentives for banks to clear financial transactions with CCPs that are licensed in a jurisdiction where the relevant regulator has adopted rules or regulations that are consistent with the standards set forth in the PFMIs (“QCCPs”). CCPs that operate internationally, but are not QCCPs (*i.e.*, whose regulator has not adopted regulations consistent with the PFMIs) may face a substantial competitive disadvantage.⁵ A DCO that is subject to the existing requirements of Subparts A, B and C of the Commission’s regulations as well as the proposed amendments to Subpart C should meet the requirements for QCCP status.

The proposed regulations include recordkeeping and reporting requirements⁶ that would be collections of information requiring approval under the PRA, which is being sought by amendment to this collection 3038-0081. The information that would be collected under the proposed regulations is necessary for the Commission to determine whether a Subpart C DCO meets the standards that have been and are being proposed and is likely to be able to maintain compliance with them; to evaluate whether DCOs are complying with Commission regulations; and to perform risk analyses with respect to a SIDCO or Subpart C DCO, as well as to the financial system, based upon the various safeguards contained in the proposed regulations.

⁴ These regulations were codified in Subpart C of Part 39 of the Commission’s regulations (“Subpart C”).

⁵ Because of this competitive disadvantage, the Commission’s proposed regulations would apply to SIDCOs and to those DCOs that “opt” to become subject to the regulations contained in Subpart C via the mechanism provided in the proposal.

⁶ DCO core principles J and K, respectively, require a DCO to: (1) provide to the Commission with all information necessary for the Commission to consult its oversight function with respect to the DCO’s activities as a derivatives clearing organization and (2) maintain records of all activities related to the business of the DCO as a derivatives clearing organization.

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.
 - a. The information collected in the section 725(b) regulations is analyzed by the Commission and its staff to determine whether DCOs are in compliance Commission regulations.
 - b. With respect to the proposed SIDCO/Subpart C DCO Regulations, the information collections associated with the proposed regulations are designed to be coordinated with various risk management practices (including governance, financial resource, liquidity, default, and recovery and wind-down practices) intended to address the potential impact that a SIDCO's failure could have on the U.S. financial system and are consistent with the goals of the Dodd-Frank Act and the PFMI. The information collection requirements would permit the Commission and its staff to review such practices and to determine whether a SIDCO or Subpart C DCO is in compliance with the Commission's regulations .
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.
 - a. With respect to the Section 725(b) Regulations, the required information would be filed electronically.
 - b. With respect to the proposed SIDCO/Subpart C DCO Regulations, the reporting requirements may be effected electronically, and the recordkeeping may be maintained in the same manner.
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 with respect both to the Section 725(b) Regulations and the proposed SIDCO/Subpart C DCO Regulations are not already collected by the Commission for any other purpose, collected by any other agency, or available for public disclosure through 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.

The required information with respect both to the Section 725(b) Regulations and the proposed SIDCO/Subpart C DCO Regulations 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.

- a. With respect to the Section 725(b) Regulations, the CEA, as amended by the Dodd-Frank Act, requires a report to be submitted annually to the Commission. If the collection was conducted less frequently, it would not comport with the requirements of the CEA. In addition, the Commission requires an annual report to obtain timely information that is necessary to ensure that DCOs remain in compliance with Commission regulations.
- b. With respect to the proposed SIDCO/Subpart C DCO Regulations, the CEA, as amended by the Dodd-Frank Act, requires the Council to designate FMUs that are, or are likely to become systemically important, meaning that their failure could have significant adverse effects on the U.S. financial system. Additionally, Section 802 of the Dodd-Frank Act provides for enhancements to the regulation and supervision of systemically important payment, clearing, and settlement activities, including those of DCOs that may be systemically important.

Section 805 and 752 of the Dodd-Frank Act, respectively, direct the Commission to consider relevant international standards and existing prudential requirements when prescribing risk management standards governing the operations related to payment clearing, and settlement activities for systemically important FMUs and direct the Commission to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of, among other things, swaps, futures, and options transactions.

If the collections proposed in the title VIII rules were conducted less frequently, the implementation of regulations consistent with these provisions of the Dodd-Frank Act and relevant international standards would be undermined, as would the ability of the Commission to ensure that SIDCOs and Subpart C DCOs are in compliance with Commission regulations and have established appropriate risk management practices.

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:
 - a. The Section 725(b) Regulations require DCOs to report information to the Commission on an annual basis, but would allow the Commission to collect information at other times as necessary. This provision is designed to address the need for the Commission to ensure that DCOs remain in compliance with Commission regulations.
 - b. With respect to the SIDCO/Subpart C DCO Regulations, , none of the 19 proposed reporting requirements would be effected more than quarterly.

Many of the requirements are one-time events, particularly those related to a DCO opting-into compliance with the Subpart C regulations (*e.g.*, requirements involving the preparation and filing of election forms and related materials).

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:
 - a. With respect to the section 725(b) Regulations, in order for the Commission to assess adequately whether a DCO is in compliance Commission regulations, a DCO 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.
 - b. Similarly, certain of the written responses that may be required in less than 30 days pursuant to the SIDCO/Subpart C DCO Regulations relate to matters regarding the safety and soundness of a SIDCO or Subpart C DCO that that may require immediate attention. Such prompt attention is particularly important with respect to SIDCOs, in light of the potential impact that a SIDCO's failure could have on the U.S. financial system.

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

With respect both to the Section 725(b) and SIDCO/Subpart C DCO Regulations, DCOs are required to submit only single copies of documents.

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

The CEA explicitly requires record retention by DCOs for more than three years. A DCO is required by core principle K to maintain records of all activities related to its business as a DCO in a form and manner that is acceptable to the Commission for a period of not less than 5 years. This is applicable both the Section 725(b) and SIDCO/Subpart C DCO Regulations.

- 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 in either the Section 725(b) or the SIDCO/Subpart C DCO Regulations.

- 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. This is applicable to both the Section 725(b) and SIDCO/Subpart C Regulations.

- 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 Commission and its staff do not make unsupportable pledges confidentiality in any circumstance.

- 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 Commission has procedures to protect the confidentiality of a respondent's information promulgated to ensure compliance with the Freedom of Information Act. These are set forth in 17 CFR Part 145. Additionally, section 8 of the CEA proscribes the Commission and its staff from disclosing certain market-related confidential information. The Commission also has in place a comprehensive program to ensure compliance with the Privacy Act of 1974, which requires protection of covered information maintained in government systems of records.

For enforcement purposes, Commission regulation 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 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.
 - a. With respect to the Section 725(b) Regulations, the Commission affirmatively sought comment from the public and federal agencies on the proposed information collection. A copy of the proposed regulation as it appears in the *Federal Register* (75 FR 77576 December 13, 2010), including the explicit solicitation of comment on all aspects of the reporting and recordkeeping burdens imposed, is accompanied with this submission.
 - b. The proposed SIDCO/Subpart C DCO Regulations will be published in the *Federal Register*. A copy of the proposal is attached hereto. The proposed regulations include a request for comment on all aspects of the proposed regulations, as well as requests for comment on several specific aspects of the regulations. The proposed regulation notifies the public and other federal agencies that the Commission is filing

this information collection request in the form of an amendment to this collection 3038-0081.

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 and its staff have held meetings with persons outside the agency to discuss the DCO core principles generally. In addition, CCOs were queried about the annual report required in the Section 725(b) Regulations. The reports and recordkeeping proposed in SIDCO/Subpart C DCO Regulations are consistent with DCO practice related to core principle compliance. As noted above, the Commission has requested public comment on all aspects of the proposed regulations.

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 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.

The Commission provides no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 CFR Part 145, section 8 of the CEA, the Privacy Act of 1974, or any other applicable law or regulation

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.

In addition to other research, Commission staff discussed the costs associated with the annual report required in the section 725(b) regulations with the CCO of a DCO. The results are reflected in Attachment A. The estimates related to the information collections in the proposed SIDCO/Subpart C DCO regulations are based on the experience of the Commission and its staff with DCOs engaged in related practices since the DCO core principles were first enacted in 2000, and also are provided in Attachment A.

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).

- 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.

No new start-up or operations and maintenance costs are involved. See Attachment A. The costs associated with the Section 725(b) Regulations and the proposed SIDCO/Subpart C DCO Regulations are provided in the responses to questions 12 and 14.

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.
 - a. The estimate of the cost to the government per respondent is about \$464 per year with respect to the collection contained in the Section 725(b) Regulations. This is primarily salaries and benefits for staff to analyze the information received, as follows: one full time equivalent reviewing, for 8 hours each, twelve annuals report at an average salary of \$58 per hour.
 - b. The same formula will apply generally to the collection contained in the proposed SIDCO/Subpart C DCO Regulations. The primary cost to the federal government will be the salaries and benefits for staff to process the applications received; periodically review reports, disclosures, and records for compliance with the CEA and these proposed implementing regulations; and perform risk analyses with respect to a SIDCO or Subpart C DCO, as well as to the financial system, based upon the various safeguards contained in the proposed regulations. It is anticipated that these costs will translate into 10 Commission employees, who will spend approximately 10% of their time performing these tasks. At an estimated combined salary and benefit cost of \$75 per hour per employee, the costs to the government per respondent will be approximately \$156,000.
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.

Attachment A

SECTION 725(B) REGULATIONS – REPORTING
PREVIOUSLY APPROVED COLLECTION

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
12	1	12	40-80	480-960	\$4,000 to \$8,000

SIDCO/SUBPART C DCO REGULATIONS – REPORTING
PROPOSED COLLECTION

	Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
Subpart C DCOs Only						
Certifications	5	1	5	25	125	\$10,000
Exhibits A thru G	5	1	5	155	775	\$60,000
Disclosure Framework Responses	5	1	5	200	1,000	\$80,000
Quantitative Information Disclosures	5	1	5	80	400	\$32,000
Supplemental Information	5	5	25	45	1,125	\$90,000
Amendments to Election Form	5	3	15	8	120	\$10,000
Withdrawal Notices	1	1	1	2	2	\$180
Rescission Notices	1	75	75	3	225	\$19,000
SIDCO and Subpart C DCOs						

Written Governance Arrangements	7	1	7	200	1,400	\$110,000
Governance Disclosures	7	6	42	3	126	\$10,000
Stress Test Results	7	16	112	14	1,568	\$125,000
Disclosure Framework Requirements (SIDCOs Only)	2	1	2	200	400	\$32,000
Disclosure Framework Requirements (Both)	7	1	7	80	560	\$51,000
Quantitative Information Disclosures (SIDCOs Only)	2	1	2	80	160	\$15,000
Quantitative Information Disclosures (Both)	7	1	7	35	245	\$22,000
Transaction, Segregation, Portability Disclosures	7	2	14	35	490	\$47,000
Efficiency and Effectiveness Review	7	1	7	3	21	\$2,000
Recovery and Wind-Down Plan	7	1	7	480	3,360	\$310,000
TOTALS		119	343	1,648	12,102	1,025,180

**SIDCO/SUBPART C DCO REGULATIONS – RECORDKEEPING
PROPOSED COLLECTION**

	Estimated # of Recordkeepers	Records to Be Kept Annually	Total Annual Responses	Estimated Average Number of Hours Per	Estimated Total Number of Hours of Annual	Estimated Annual Cost Per Recordke
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	Per Year	by Each		Record	Burden in Fiscal Year	eper
<u>Subpart C DCOs Only</u>						
Generally	5	82	410	1	2,050	\$50,000
SIDCOs and Subpart C DCOs						
Liquidity Resource Due Diligence and Testing	7	4	28	10	280	\$5,000
Financial and Liquidity Resources, Excluding Due Diligence	7	4	28	10	280	\$5,000
Generally	7	4	28	10	280	\$5,000
TOTALS		94	494	31	2,890	65,000