

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

OMB CONTROL NUMBER 3038-0091

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 724(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-023, 124 stat. 1376, amends the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1 *et seq.*, to add, as section 4d(f) thereof, provisions concerning the protection of collateral provided by a cleared swaps customer to margin, guaranty, or secure a swap cleared by or through a derivatives clearing organization (“DCO”). The Commission implemented customer collateral rules in February 2012 as part 22 of its regulations, which contained collections of information for which an information collection request was submitted.

The Commission now is proposing rules to enhance certain provisions of its regulations to strengthen the protection of customer collateral held by its registrants, significantly to prevent unauthorized usage of customer funds by FCMs. This includes proposed modifications to existing rules respecting the collateral of cleared swaps customers. In particular, the Commission is newly proposing § 22.17 and revising § 22.2(g) of its regulations, which require additions and revisions to this collection with respect to the recordkeeping and reporting associated with each of these rules. The Commission estimates that the proposal, which builds upon the already existing framework adopted in Part 22, will increase burden hours by approximately 10 minutes per day for an anticipated 100 entities.

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 collection as it was initially proposed required data to be compiled, maintained, and submitted to third parties and the Commission to help ensure that FCMs’ Cleared Swaps Customer Accounts are in compliance at all times with statutory and regulatory requirements for such accounts; to confirm that depositories of cleared swaps customer funds understand their responsibilities with respect to the protection of such funds; to facilitate risk management, and, in the event of default by an FCM, to enable DCOs and Collecting FCMs to perform their duty, to treat the collateral attributed to each customer of the FCM on an individual basis; and to ensure that customers are informed of the procedures to which accounts containing their swaps collateral may be subject in the event of a default by their FCM.

The collection as it will be revised will add reporting and recordkeeping requirements, building upon the information already required to be collected, retained, and reported to enhance the ability of the Commission and the designated self-regulatory organization of an FCM to

identify problematic financial matters in time to avoid market disruptions when an FCM may fail, particularly with respect to the tie-up of customer funds that may result.

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 collections of information in the proposal may be reported and maintained electronically. It is expected modest modifications to software, information technology and systems already used by the relevant businesses would be necessary, which are built into the daily burden number estimated by the Commission associated with the newly proposed rules.

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 proposed collections of information do not duplicate any existing collection of information, but rather build upon business and regulatory compliance practices already in place at an FCM.

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. In fact, because of the minimum net capital required to be maintained by an FCM, the Commission has determined that an FCM cannot be a small entity for purposes of the Regulatory Flexibility Act.

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 collection of information was performed less frequently it would not effectively permit the Commission or an FCM's designated self-regulatory organization to monitor compliance with the FCM's obligations to maintain customer collateral separately from its own collateral, which could result in market disruptions, particularly in the event of a tie-up of customer collateral, which has occurred in recent FCM failures.

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;**

Less frequent reporting and recordkeeping would not permit the Commission, or the self-regulatory organizations subject to its oversight, to adequately administer the newly proposed

customer protection rules consistently with their purpose, which is supported fully by the CEA as amended, and monitor for compliance with the part 22 regulations that have been implemented consistently with the CEA, as amended.

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

Not applicable with respect to the revisions to the part 22 regulations contained in the Commission's new proposal.

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

Respondents are not required to submit more than an original and two copies of any documents to the Commission or third parties.

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

Not applicable.

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

Not applicable.

- **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 collection does not involve any 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 Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

Finally, for civil and criminal law enforcement purposes, Commission rule 1.31, 17 C.F.R. § 1.31, requires that:

"All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice."

8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

No such circumstances are anticipated.

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

Not applicable.

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

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, 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." Moreover, the Commission complies with the Freedom of Information Act regulations it has established, set forth at 17 CFR Part 145, and its Government in the Sunshine Act regulations, set forth at 17 CFR Part 147.

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 this collection 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.

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.**

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 primary costs for requesting and reviewing documents under the existing OMB Collection 3038-0024 and this amendment are the salaries and benefits for attorneys and auditors to analyze the information collected. The proposed amendment will add to existing costs, however, the information collected is of the same type and amount as the existing collection.

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

The proposed regulations are designed to enhance the monitoring and security of customer funds that are held by an FCM, to enable the Commission and the self-regulatory organizations subject to its oversight to monitor for compliance with provisions of the CEA and its implementing regulations that provide for the protection of customer collateral. There is no program change related to the existing collection and regulations, for which the Commission continues to estimate 112 registered FCMs will expend 36,500 burden hours annually. The revision to the collection, to account for additional burden hours associated with newly proposed regulations 22.17 and 22.2(g), is estimated to affect as many as 100 FCMs for a total of 26,100 annually. The number of FCMs was estimated downward for the new rules because it is not expected that all 112 FCMs presently registered with the Commission will carry collateral for cleared swaps customers.

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.

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.

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.

Does not apply.

Attachment A

Part 22 – Disclosure and Retention of Certain Information Relating to Cleared Swaps Customer Collateral

OMB Collection File 3038-0091

Previous Estimated Burden

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	09/30/2012	36 Months From Approved	
Responses	112	112	0
Time Burden (Hours)	36,500	36,500	0
Cost Burden (Dollars)	1,212	1,212	0

Amended Estimated Hourly Burden

Report	Estimated Number of Respondents	Reports Per period by Each	Total Responses	Estimated Average Number of Hours per year	Annual Reporting Burden
Existing			112	36,500	36,500
§§ 22.17and 22.2(g)	100	261	26,100	26,100	26,100
TOTAL			26,212	62,600	62,600