

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

OMB CONTROL NUMBER 3038-0075

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(c) of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to add, as section 4s(l) thereof, 7 U.S.C. § 6s(l), provisions concerning the rights of counterparties to swap dealers (“SDs”) and major swap participants (“MSPs”) with respect to the segregation of collateral supplied for margining, guaranteeing, or securing uncleared swaps. The new section 4s(l)(1)(A) requires that a SD or MSP must notify each counterparty with respect to an uncleared swap at the beginning of a swap transaction that the counterparty has the right to require segregation of the fund or other property supplied to margin, guarantee, or secure the obligation of the counterparty. Regulation 23.701 implements this statutory requirement and specifies that certain information be provided about the terms and conditions of segregation, including price information to the extent that the SD or MSP has such information and the identity of one or more independent depositories for segregated collateral.¹ In order to ensure that the notification is provided to a person in a position to evaluate and act on the information provided, section 23.701(c) requires that the notification shall be made to an officer of the counterparty responsible for the management of collateral. If no such party is identified by the counterparty, then the notification shall be made to the Chief Risk Officer, or, if there is no such officer, the Chief Executive Officer, or if none, the highest level decisionmaker for the counterparty.² To help ensure that the information provided by the notification is received and considered by the appropriate officer of the counterparty, section 23.701(d) requires that the SD or MSP shall obtain from the counterparty confirmation of receipt from the recipient specified in section 23.701(c) and retain it as a business record pursuant to section 1.31 of the Commission’s rules. Section 23.701(e) permits a SD or MSP that engages in multiple swap transactions with a given counterparty to make the required notification to that counterparty no more than once a year rather than at the beginning of each separate swap transaction.

The new section 4s(l)(4) of the CEA mandates that, if the counterparty does not choose to require segregation, the SD or MSP shall report to the counterparty, on a quarterly basis, “that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.” This provision is implemented in Regulation 23.704(a), which requires that such reports be made no

¹ When the rule was proposed, this regulation was originally numbers as Regulation 23.601. The requirement to provide certain information about terms and conditions has been added to the original proposed rule in response to comments. See Question 8. The burden estimate, as set forth below, has been adjusted accordingly.

² This requirement has been slightly modified since the proposed rule, to increase flexibility in compliance. The rule as originally proposed required that notice be made to the Chief Risk Officer, or, if there is no such officer, the Chief Executive Officer, or in none, the highest level decisionmaker for the counterparty.

later than the fifteenth business day of each calendar quarter for the preceding calendar quarter. Section 23.704(a) makes the Chief Compliance Officer of the SD or MSP required by section 4s(k) of the CEA responsible for such report. Section 22.704(b) provides that this obligation shall apply no earlier than the ninetieth calendar day after the first swap is transacted between the counterparties.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information received by uncleared swap counterparties pursuant to Regulation 23.701 would alert counterparties to their statutory right, if they so choose, to have funds or property used as margin in uncleared swaps transactions with SDs and MSPs kept segregated from the property of the SD or MSP. It would further alert counterparties of the need to request such segregation if they wish to exercise this right.

The information received by uncleared swap counterparties pursuant to Regulation 23.704 would be used to confirm that the back office procedures followed by a SD or MSP with whom they are dealing comply with the agreement of the parties.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Information may 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 disclosures required by the statute are not the subject of existing regulations.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-I), describe the methods used to minimize burden.

This collection of information will not have a significant impact on a substantial number of small entities since it only places obligations on swap dealers and major swap participants.

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 disclosure required by Regulation 23.701 were permitted to be made less frequently than once per year, the effectiveness of the disclosure in informing uncleared swaps counterparties of the right to segregation of margin and the need to request segregation to

exercise that right would be weakened. The frequency of the disclosure required by Regulation 23.704 is specified by new section 4s(l)(4) of the CEA.

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;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents 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;**
- **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;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **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**
- **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.**

For enforcement purposes, Commission rule 1.31 requires that:

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

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

Comments on the information collection were solicited as part of the notice of proposed rulemaking (“NPRM”) for the proposed regulation. 75 Fed. Reg. 75432, 75436 (Dec. 3, 2010).

Comments on the collection of information required by sections 23.701 and 23.704 included the following:³

General Comments on Section 23.701 Requirement to Disclose Right to Segregate Collateral

A number of commenters stated that the required disclosure of a right to segregation of collateral should include information on the price of segregation.⁴ Some commenters opposed such a requirement.⁵ In response to comments on this issue, the Commission added a requirement for price disclosure to the final rule. However, to limit costs, this disclosure only applies to price information to the extent that the SD or MSP has such information in its possession. See section 23.701(a)(3).

A number of commenters stated that counterparties should be able to make use of a custodian of segregated collateral not affiliated with the SD or MSP.⁶ In response, the final rule requires disclosure of the identity of at least one custodian not affiliated with the SD or MSP. See section 23.701(a)(2).

A number of commenters criticized the requirement, in the proposed rule, that the required disclosure be made by the SD or MSP to the counterparty’s Chief Risk Officer, or, in the absence of a Chief Risk Officer, to certain other specified officers of the counterparty.⁷ Several of these commenters suggested that the disclosure should be made to a person designated by the counterparty.⁸ In response to these comments, the final rule provides that disclosure should be made to an officer of the counterparty responsible for the management of collateral, since the purpose of segregation of collateral is to protect collateral against misuse by or insolvency on the part of the SD or MSP. Section 23.701(c). If no such party is identified by the counterparty to the SD or MSP, the notification must be made to the Chief Risk Officer or, in the absence of such an officer, to certain other specified officers of the counterparty. *Id.*

The proposed rule required that disclosure of the right to segregate collateral need be made no more than once per year to each counterparty. Some commenters advocated disclosure of this right only when the SD or MSP first enters into a business relationship with a counterparty involving swaps transactions, even if the parties continue to engage in further swaps transactions over a period of multiple years.⁹ Other commenters supported disclosure at least annu-

³ The discussion in the text summarizes comments relating specifically to the information collection requirements of these regulations.

⁴ *E.g.*, comment letters from AMG at 8, MFA at 4, State Street at 3, AGA at 4.

⁵ SIFMA/ISDA comment letter at 3.

⁶ See generally comment letters from EEI at 2, AIMA at 2, MFA at 4, Fidelity at 5.

⁷ *E.g.*, EEI at 3, ICI at 3, AGA at 5, SIFMA/ISDA at 4.

⁸ *E.g.*, SIFMA/ISDA at 4, AMG at 7.

⁹ *E.g.*, NRECA at 13, SIFMA/ISDA at 4, AMG at 7.

ally.¹⁰ The Commission determined to retain the requirement for disclosure of the right to segregate at least once per year (so long as the SD or MSP enters into at least one swap transaction with the relevant counterparty during the year in question). Section 23.701(e). The Commission concluded that this appropriately balances the policy embodied in the statute of ensuring that counterparties are alerted to their right to segregation of collateral with the burden of disclosing this right.

Section 23.704 Disclosure of Whether Back-Office Procedures of the SD or MSP Were Out of Compliance with the Agreement of the Parties

Several commenters stated that the quarterly reporting required by this regulation was unnecessary and therefor imposed an unnecessary cost.¹¹ One commenter supported the requirement or even more frequent reporting.¹² The Commission determined to retain the quarterly reporting requirement in the final rule because the statute requires quarterly reporting. Section 23.704; CEA section 4s(1)(4).

Comments on Burden and Cost of Information Collection

The Commission received two comments specifically addressing the Commission's numerical PRA burden estimate for regulation 23.701.¹³ A comment from ISDA stated that the annual burden estimate of 0.3 hours per counterparty for this requirement appeared insufficient. The comment stated:

Specifically, the following documentation-related functions would be necessary: scheduling, drafting, issuing, tracking, receipt, validation, classification and storage. As a result, we believe that the process contemplated by the Proposed Rules would entail multiple hours of staff time per counterparty.¹⁴

The second comment made substantially the same point.¹⁵ In response to these comments, and certain other considerations, the Commission has reevaluated the per-disclosure burden estimate for regulation 23.701 and has modified the estimate as discussed below.

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.

¹⁰ *E.g.*, Fidelity at 3, AGA at 5-6.

¹¹ *E.g.*, Working Group at 6, SIFMA/ISDA at 7.

¹² AIMA at 3.

¹³ The comments referred to regulation 23.601, reflecting the numbering in the NPRM.

¹⁴ ISDA letter at 5.

¹⁵ SIFMA/ISDA letter at 4.

The Commission sought comments via the NPRM for the regulations requiring the information collection. In addition, Commission staff members met extensively with representatives of affected entities to discuss the regulations and conducted a public roundtable at which the regulations were discussed.

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.

Does not apply since this is a new information collection.

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

Does not apply.

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

Does not apply because the collection of information involves disclosure of information regarding legal rights or business practices from one private business entity to another.

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.

None of the regulations 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.**

Section 23.701

The Commission has determined to adjust the burden estimate for Regulations 23.701 and 23.704 from the estimate made at the time of the NPRM based on a number of considerations. Both regulations apply to SDs and MSPs. At the time the NPRM was published, it was estimated, for purposes of the PRA burden estimate, that the total number of SDs and MSPs would be about 300 entities. Based on information developed since that time, the Commission now estimates that the total number of SDs and MSPs, and thus the total number of entities required to engage in information collection pursuant to these rules, will be about 125 entities.¹⁶

For the disclosure required by regulation 23.701 the Commission is also adjusting its estimate of the per disclosure burden, for a number of reasons. First, the final regulation requires that the disclosure (a) identify one or more custodians for segregated initial margin acceptable to the SD or MSP, at least one of which must be legally independent of the parties to the transactions and (b) provide information on the price of segregation for each identified custodian to the extent that the SD or MSP has such information. As a result of these changes, it is expected that part of the disclosure required by the regulation will be standardized, with accompanying efficiencies in drafting and making disclosure, but that part of the disclosure may be specific to particular transactions. Second, as noted above, commenters suggested that the burden estimate in the NPRM was insufficient to cover all of the tasks necessary to make the required disclosure.

In the NPRM, the Commission estimated that disclosure required by regulation 23.701 would require 0.3 hours of work per disclosure, which could be performed by staff with a salary level of approximately \$20 per hour. The Commission has adjusted this time estimate to 2 hours per disclosure based on the considerations discussed immediately above. The Commission further estimates that the average dollar cost of the disclosure per hour will be \$50, giving a cost of \$100 for 2 hours of work.¹⁷ In addition, for purposes of the NPRM, the Commission

¹⁶ See discussion in Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2622 (Jan. 19, 2012).

¹⁷ This estimate is based on the assumption that about three quarters of the work will be done by junior level staff with a salary of approximately \$25 per hour and that about one quarter of the work will be done by senior level staff with a salary of approximately \$100 per hour. Compare SIFMA, Report on Management and Professional Earnings in the Securities Industry-2011 at 4 (national average total compensation for a junior level compliance specialist in the survey equaled \$50,998 per year, an hourly equivalent of approximately \$25), 8 (national average total compensation for a compliance attorney in the survey equaled \$131,304 per year, an hourly equivalent of approximately \$65).

estimated that each SD and MSP would make the disclosure once per year to an average of between 433 and 666 counterparties.¹⁸ The Commission is adjusting the estimate of number of disclosures per SD or MSP per year based on the reduction, noted above, in the estimate of the total number of SDs and MSPs from about 300 to about 125. Assuming a roughly similar total number of counterparties will be doing business with SDs and MSPs, this implies that the number of counterparties doing business with each individual SD or MSP in a year will probably be higher on average than was estimated at the time of the NPRM. To account for this likely effect, the Commission now estimates that each SD and MSP will, on average, make the disclosure to approximately 1300 counterparties each year. As at the time of the NPRM, the Commission expects that the number of counterparties per SD or MSP per year is likely to be considerably higher than this average figure for the largest SDs and MSPs, and smaller than this average figure for some other SDs and MSPs. Given the absence of experience with this newly promulgated rule, these estimates are subject to an inherent degree of uncertainty.

The Commission, in the NPRM, estimated that regulation 23.701 would require a total of approximately 130,000-200,000 disclosures per year, generating an estimated total annual information collection burden of approximately 40,000-60,000 hours and \$800,000-\$1,200,000. Based on the adjustments described above the Commission estimates that regulation 23.701 will require a total of approximately 162,500 disclosures per year, generating an estimated total annual information collection burden of approximately 325,000 hours and cost of \$16,250,000.

Section 23.704

The Commission, in the NPRM, estimated that regulation 23.704 would require a total of approximately 260,000-400,000 disclosures per year, generating an estimated total annual information collection burden of approximately 80,000-120,000 hours and \$2,400,000-\$3,500,000.¹⁹ The Commission is adjusting this estimate based on the reduced estimate of the number of affected SDs and MSPs from 300 to 125, and the increased estimate of 1300 counterparties per SD or MSP. In the absence of more specific information, the Commission continues to assume for purposes of this calculation that half of counterparties will elect not to segregate, and will receive the required quarterly disclosure. This means that, on average, each

¹⁸ The estimate in the NPRM assumed that the largest SDs and MSPs would make the required disclosure to an average of 5,000-10,000 counterparties per year and that smaller SDs and MSPs would make the required disclosure to an average of about 200 counterparties per year. See 75 FR at 75436 (Dec. 3, 2010) and n. 29.

¹⁹ This estimate in the NPRM was based on the requirement of regulation 23.704 that SDs and MSPs make the required disclosure four times each year to each of their uncleared swaps counterparties that does not choose to require segregation of initial margin. It was further based on estimates that each disclosure would require, on average, approximately 0.3 hours of staff time by staff with a salary level of approximately \$30 per hour although, per the terms of the rule, this would vary depending on the specifics of the agreement of the parties with regard to the back-office procedures of the SD or MSP and the extent to which such procedures were standardized. The estimate further assumed that about half of all uncleared swaps counterparties would not choose segregation of initial margin and that, as a result, the largest SDs and MSPs would make the required disclosure to an average of 2,500-5,000 counterparties four times per year and that smaller SDs and MSPs would make the required disclosure to an average of about 100 counterparties four times per year. See 75 FR at 75436 (Dec. 3, 2010) and n. 30; SIFMA, Report on Management and Professional Earnings in the Securities Industry-2011 at 4 (national average total compensation for a junior level compliance specialist in survey equaled \$50,998 per year, an hourly equivalent of approximately \$25).

SD or MSP will make the disclosure to 650 of its counterparties (1/2 of 1300) four times per year, for a total of 2600 disclosures per year.

The Commission notes that the cost per counterparty can be divided into two costs: an initial cost and an on-going, annual cost. In respect of the initial cost, the Commission estimates a total of twenty hours of the Chief Compliance Officer's time to prepare and design the SD or MSP's compliance procedures for its 23.704 disclosure requirements. In respect of ongoing costs, the Commission recognizes that, while the degree of disclosure to particular counterparties may differ (e.g., agreements may require no disclosure, high-level disclosure only or more in-depth disclosure), it is likely that the levels of disclosures may coalesce around certain intervals such that efficiencies may be observed in respect of analysis and preparation of current disclosures and ongoing updates to the same. The Commission estimates that the Chief Compliance Officer will spend five hours, on an annual basis, updating the existing procedures and reviewing compliance with such procedures as well as an additional hour, on a non-regular basis in perhaps 2% of the cases, addressing non-routine issues that may arise in respect of a particular disclosure to a counterparty. The Commission further estimates that a junior compliance officer will spend, on average, approximately 0.3 hours per counterparty on a quarterly basis, analyzing the procedures followed and preparing the disclosure to be sent. Based on these adjustments, the Commission now estimates that regulation 23.704 will require initial costs of approximately \$280,000 and, on an ongoing basis, a total of approximately 325,000 disclosures per year generating an estimated total annual information collection burden of approximately \$3.7 million, based on the following: an annual cost of \$29,300 per SD/MSP comprising eighteen hours for the Chief Compliance Officer with a salary level of approximately \$110.97 per hour and the annual cost of 780 hours for junior compliance staff with a salary level of approximately \$35 per hour, multiplied by an estimated 125 SD/MSPs.

See Appendix 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.**

Based on the analysis and calculations in the previous section, total start-up costs are expected to be \$280,000 in the form of salary for Chief Compliance Officer's to prepared and design compliance procedures for compliance with section 23.701.

See Appendix 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 collection of information is not expected to impose significant annual costs on the Federal Government because it involves a requirement for certain private parties to make disclosures to other private parties with whom they do business.

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

This is a new collection of information to implement statutory requirements as describe in the answer to question 1.

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.

Appendix A

Reporting Burden

Regulations (17 CFR)	Estimated Number of Entities	Estimated Annual Responses per Entity	Total Annual Responses	Estimated Number of Hours Per Response	Estimated Average Cost per Response	Total Annual Burden-Hours	Total Annual Burden-Cost
23.701	125	1300	162,500	2	\$100	325,000	\$16,250,000
23.704*	125	2600**	325,000	.31	\$11.40	100,750	\$3,700,000

*Section 23.704 also has an estimated total startup cost of \$280,000. Annualized over 3 years this comes to \$93,333 per year.

**The 2600 reports per annum estimate is based on each entity making quarterly reports to 650 counterparties (4 x 650 = 2600 reports per year).