

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0076

Risk Management Requirements for Derivatives Clearing Organizations

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.

On July 21, 2010, President Obama signed the Dodd-Frank Act.¹ Title VII of the Dodd-Frank Act² amended the Commodity Exchange Act (CEA)³ to establish a comprehensive new regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 725(c) of the Dodd-Frank Act amended Section 5b(c)(2) of the CEA, which sets forth core principles with which a derivatives clearing organization ("DCO") must comply to be registered, and to maintain registration, as a DCO. Furthermore, Congress expressly confirmed that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under Section 8a(5) of the CEA.⁴ Consequently, the Commission proposed rules requiring DCO risk management based on six core principles outlined in the amended CEA Section 5b(c)(2): Core Principles C (Participant and Product Eligibility), D (Risk Management), E (Settlement Procedures), F (Treatment of Funds), G (Default Rules and Procedures) and I (System Safeguards). The Commission also proposed to require any person seeking to register as a DCO to submit a completed Form DCO as provided in the appendix to part 39, accompanied by all applicable exhibits. These proposed rules were adopted, along with other changes to implement DCO requirements, in November 2011.⁵

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov>.

² Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

³ 7 U.S.C. 1 *et seq.*

⁴ Section 8a(5) of the CEA authorizes the Commission to promulgate such Regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

⁵ 76 FR 69334 (November 8, 2011).

The regulations that implement each of these core principles require each respondent to maintain records of activities related to its business as a DCO, including all information required to be created, generated, or reported under part 39, including but not limited to the results of and methodology used for all tests, reviews, and calculations. In addition, Regulation 39.18(g) requires a DCO to notify Commission staff of certain exceptional events, including any hardware or software malfunction, cyber security incident, or targeted threat that materially impairs or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or any activation of the DCO's business continuity and disaster recovery plan. Further, Regulation 39.18(h) requires that the DCO provide Commission staff with timely advance notice of planned changes to automated systems that are likely to have a significant impact on the reliability, security, or adequate scalable capacity of such systems, as well as planned changes to the DCO's program of risk analysis and oversight. These notice requirements are incorporated by reference in Regulation 39.19, which establishes the procedure for such notifications. The Commission also adopted Form DCO to standardize the application process for DCO registration.

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 is analyzed by Commission staff and forms a basis for on-going evaluation and oversight of the risk management and financial integrity of DCOs and compliance with the CEA and Commission regulations. It informs the Commission concerning whether the Commission should take any action regarding the failure of financial and risk management practices or lack of compliance with the CEA. It also is used as the basis for determining whether applicants meet the necessary criteria to register as a DCO.

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.

Unless there is an emergency situation where the respondent might report to the Commission by telephone, information is required to 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 already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information 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 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. The required information 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.

If the information required under this collection of information were not collected, enforcement of the CEA and Commission rules would be adversely affected.

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;**

Event-specific reporting may or may not be 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:**

In order for the Commission to adequately assess a DCO's compliance with these core principles and related regulations, a DCO may be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation. At all times, the Commission's goal is to protect the integrity of the U.S. clearing system.

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

DCOs are required to submit documents electronically, only once. No hard copies are required.

- **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.

- **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.

- **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.

- **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 requirements do not involve an unsupported pledge of confidentiality regarding the collection of data.

- **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 agency has procedures to protect the confidentiality of a respondent's information. These are set forth in 17 CFR Part 145.

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.**

The 60-day Federal register notice seeking public comment was published on January 26, 2015, 80 FR 3955. One comment from the Minneapolis Grain Exchange, Inc. ("MGEX") was received. In the comment, MGEX states that MGEX is both a Subpart C DCO and a Designated Contract Market, and is therefore subject to the financial resource reporting requirements set forth in Part 39 of the CFTC Regulations. The comment further states although MGEX recognizes that the development of automated electronic or other technological collection techniques may have certain advantages, mandating that all DCOs use one method could prove impractical and may, in fact, increase the burden of collecting information rather than minimizing it for DCOs. However, the commenter did not counter the Commission burden estimates or provide distinct estimates that merit a change in the estimates provided in this renewal.

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.

As part of the rulemaking process, the rule was published in the Federal Register. Thus, members of the public, including respondents, were provided an opportunity to comment on the rule and related matters, including issues concerning recordkeeping and other paperwork burdens.

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 renumeration 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 does not provide respondents with an assurance of confidentiality, only to the extent permitted by law. Section 8(a) of the CEA provides for data confidentiality except under limited circumstances. The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

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.**

See Attachment A. Although the burden estimate for DCO applicants was included in the prior supporting statement for this information collection, such amounts were inadvertently omitted from the Form 83-I and therefore are not included in the current approved burden estimate. This request for extension of the information collection seeks to correct the inadvertent omission.

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.**

Total costs are included in the answer to question 12. See Attachment A. Although the existing information collection includes a separate dollar amount for capital and start-up costs, the Commission is of the view that this is no longer applicable for this renewal.

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 estimate of the cost to the government per respondent for new event-specific reporting requirements is negligible as existing staff will be available to receive such notices. Receiving applications to register as a derivatives clearing organization is a pre-existing activity and it is anticipated that the “cost” to the Commission will decrease with the efficiencies provided by the new form. The cost of application review cannot be stated as a fixed number because each application is unique.

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

The figures in Attachment A have been adjusted solely to reflect the current number of registered DCOs.

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**Risk Management Requirements and Registration Requirements Applicable to Derivatives Clearing Organizations****OMB Collection File 3038-0076**

The burden associated with rules implementing risk management requirements for registered DCOs and the Form DCO for DCO applicants is estimated as follows:

Commission staff estimates that all respondents could expend in the aggregate \$100,000 initially and \$520 annually to comply with the proposed regulations. Depending on the expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$400 per hour.

1. Collection 3038-0076 –Derivatives Clearing Organization Applicants Reporting Requirement

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
3	1	3	400	1200	\$100,000*

* Taking into account an average salary of \$75-400 per hour.

2. Collection 3038-0076 – Event-Specific System Safeguards Reporting Requirements for Derivatives Clearing Organizations

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
14	2	28	0.1	2.8	\$20*

*Taking into account an hourly cost of \$100.

3. Collection 3038-0076 – Recordkeeping Requirements for Derivatives Clearing Organizations

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
14	1	14	50	700	\$500*

*Taking into account an hourly cost of \$10.