

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

**OMB CONTROL NUMBER 3038-0106**

**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 721 of the Dodd-Frank Act added new section 1a(47) to the Commodity Exchange Act (CEA), defining “swap” to include “[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more ... commodities....” Consistent with the Dodd-Frank Act, the Commission adopted regulation 32.2 directing that commodity option transactions be regulated in the same manner as other swaps. At the same time, the Commission adopted an interim final rule, regulation 32.3, granting an exemption from most of the swaps rules to “trade options.” A trade option is a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) delivery.

The Commission proposes to delete from 32.3(b) the requirement that counterparties to “unreported trade options” (i.e., trade options that are not otherwise reported to a swap data repository pursuant to part 45 of the Commission’s rules) must file an annual report with the Commission on Form TO. The Commission proposes to further amend 32.3(b) by adding a requirement that trade option counterparties that are not swap dealers or major swap participants (“Non-SD/MSP”) must provide notice by email to DMO within 30 days after entering into trade options, whether reported or unreported, that have an aggregate notional value in excess of \$1 billion in any calendar year (the “1 Billion Notice”). In the alternative, a Non-SD/MSP may provide notice by email to DMO that it reasonably expects to enter into trade options, whether reported or unreported, having an aggregate notional value in excess of \$1 billion during any calendar year (the “Alternative Notice”).

In light of the other proposed amendments that would generally remove reporting requirements for Non-SD/MSP counterparties to trade options, the proposed \$1 Billion Notice collection would be necessary to provide the Commission insight into the size of the market for unreported trade options and the identities of the most significant market players. Additionally, the \$1 Billion Notice would help guide the Commission’s efforts to collect additional information through its authority to obtain copies of books or records required to be kept pursuant to the CEA and the Commission’s regulations should market circumstances dictate. Accordingly, the Commission is amending OMB control number 3038-0106, to provide for the new \$1 Billion Notice.

**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 Commission would use the information generated by \$1 Billion Notice collection of emails by trade option counterparties that are Non-SD/MSPs to determine the most significant market players entering into unreported trade options, and, if warranted, to conduct market analysis and investigations and in connection with litigation. That information would, in turn, guide the Commission's efforts to collect more detailed information, through its authority to inspect books and records, when warranted (e.g., threatened or actual market disruption).

**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 will be submitted via email. The Commission chose this approach due to its belief that submission via email would be the least burdensome form of submission for affected market participants.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The required information is not available from any other source because the \$1 Billion Notice and Alternative Notice were designed to capture information not reported to the Commission pursuant to other Commission reporting 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.**

While the proposal would impose a new requirement on certain Non-SD/MSPs to provide DMO by email with either the \$1 Billion Notice or the Alternative Notice annually, the Commission does not believe that this requirement would impact many small entities, if any at all. Nevertheless, the proposal includes an Initial Regulatory Flexibility Act analysis, to the extent there may be small entities impacted by the proposed rule. Yet, given the significant volume of trade options required to trigger the \$1 Billion Notice or the Alternative Notice requirement, the Commission expects that it would apply to only a small number of entities and that such entities would likely be dominant in their field. The Commission's view is supported by DMO's previous experience with the \$ 1 Billion Notice provision in CFTC No-Action Letter No. 13-08: DMO received a \$1 Billion Notice from only sixteen of the more than 300 Non-SD/MSPs that filed a Form TO in 2014, only slightly more than the nine entities that submitted a \$1 Billion Notice in 2014, and all such entities were generally well-known in their respective industries.

**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.**

Failure to collect the information annually would adversely affect the Commission's ability to oversee the market for unreported trade options, which are swaps, by significantly

delaying its ability to investigate suspected market misconduct or other relevant market events. Collecting information less frequently would limit the enforcement of Commission rules intended to protect market integrity.

**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;**

This question does not apply. The information would be collected annually.

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

This question does not apply.

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

This question does not apply. The \$1 Billion Notice and Alternative Notice do not impose any requirements that would obligate a respondent to submit more than an original and two copies of any document.

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

The \$1 Billion Notice and Alternative Notice does not impose any requirements 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;**

This question does not apply. The \$1 Billion Notice and Alternative Notice do not require nor involve any statistical surveys.

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

This question does not apply. The \$1 Billion Notice and Alternative Notice do not require nor involve the use of any statistical data classification.

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

This question does not apply. The proposed regulations do not make a pledge of confidentiality, let alone an unsupported confidentiality pledge.

- **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.

**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.**

In the proposing Federal Register release, the Commission seeks public comment on any aspect of the proposed collection of information.

**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 has sought comments relating to the trade option exemption in connection with other related Commission actions. See e.g., Further Definition of "Swap," Security-Based Swap, and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48207 (Aug. 13, 2012); Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options, 77 FR 74647 (Dec. 17, 2012); Agency Information Collection Activities under OMB Review, 78 FR 11856 (Feb. 20, 2013); Forward Contracts With Embedded Volumetric Optionality, 79 FR 69073 (Nov. 20, 2014). CFTC staff also invited comment in connection with an April 2014 public roundtable regarding issues concerning end users and the Dodd-Frank Act. The Commission has reviewed these comment letters and taken into account any significant issues raised therein in issuing this proposal.

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

No such circumstances are anticipated.

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

This question does not apply. The Commission has neither considered nor made any payment or gift to a respondent.

**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 any assurance of confidentiality beyond the confidentiality assured by the CEA. The Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations are set forth in 17 CFR Part 145. The protection of such information also is governed by section 8 of the Commodity Exchange Act, by the Trade Secrets Act, and by the Privacy Act of 1974.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

This question does not apply. The \$1 Billion Notice and Alternative Notice 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. The Commission estimates that 20 respondents will file a total of one response each annually. The estimated average number of hours per response is 2. The cost of

the hourly burden is estimated to be \$413 per hour. Thus, the total annual cost burden is \$16,520.

The Commission's \$413 per hour estimate is based on hourly wage estimates contained in SIFMA's Report on Management & Professional Earnings in the Securities Industry—2013. ("SIFMA 2013 Report"). The SIFMA 2013 Report estimated the average wage of a compliance attorney at \$684 per hour, and that of a junior compliance specialist at \$141 per hour. The Commission recognizes that particular entities within each range of complexity may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

The Commission estimates a one-hour burden to draft either the \$1 Billion Notice email or Alternative Notice email by a Compliance Attorney, at a cost of \$684 per hour. The Commission estimates an additional one-hour burden for adding the notional amounts of trade options in a spreadsheet or similar program by a junior compliance specialist, at a cost of \$141 per hour. These would be recurring, annual costs.

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no additional capital costs associated with this collection because all respondents are already required to create and store detailed records of their trade option transactions pursuant to § 32.3(b).

**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.**

Annualized costs to the Commission would include the costs for reviewing the information provided in \$1 Billion Notice and Alternative Notice emails, incurred by Commission staff. The Commission estimates that on average it will take approximately 5 minutes of staff time to review each of the \$1 Billion Notice and Alternative Notice emails. Based on the staff estimate that there will be one \$1 Billion Notice or Alternative Notice email submitted annually, the average aggregate hourly burden to review and analyze the information for all such emails submitted would be approximately 2 hours at the CT-14 level of \$91 an hour, for the total estimated aggregate cost of \$182.<sup>1</sup>

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

The Commission is proposing to add the Notice Requirement for trade option counterparties that are Non-SD/MSPs, which requirement is considered to be a collection of information within the meaning of the PRA. The proposed rules will not result in the creation of any new information collection subject to OMB review or approval under the PRA, except for the annual Notice Requirement.

**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.

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<sup>1</sup> Using the average salary (base plus locality pay) for the CT-14 pay grade for Commission employees in Washington, D.C. as of June 15, 2012, or \$149,438, multiplied by 1.271 to account for benefits, the annual cost to the Commission for each GS-14 employee would be \$189,936. Based on a work year for all Federal employees of 2,087 hours, the average hourly wage rate is \$91.00. It will therefore cost the Commission \$9 per \$1 Billion Notice or Alternative Notice email, and a total of \$182 to analyze all \$1 Billion Notice and Alternative Notice emails submitted annually.

**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

### Amendment to OMB Control Number 3038-0106 – Form TO, Annual Notice Filing for Counterparties to Unreported Trade Option

#### Reporting Burden for New \$1 Billion Notice or Alternative Notice

Estimated Annual Reporting Burden Hours and Burden Hour Costs					
17 C.F.R.	Annual Number of Respondents	Annual Reports per Respondent	Hours per Response and cost	Total Annual Responses	Total Hours Cost
32.3(b)(3)	20	1	2 hours at \$826 per response. <sup>2</sup>	20	\$16,520 (20 responses times 2 hours per response, based on \$413/hour.)

<sup>2</sup> The Commission estimates that 20 respondents will file a total of one response each annually. The estimated average number of hours per response is 2. The cost of the hourly burden is estimated to be \$413 per hour. Thus, the total annual cost burden is \$16,520.

The Commission’s \$413 per hour estimate is based on hourly wage estimates contained in SIFMA’s Report on Management & Professional Earnings in the Securities Industry—2013. (“SIFMA 2013 Report”). The SIFMA 2013 Report estimated the average wage of a compliance attorney at \$684 per hour, and that of a junior compliance specialist at \$141 per hour. The Commission recognizes that particular entities within each range of complexity may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

The Commission estimates a one-hour burden to draft either the \$1 Billion Notice email or Alternative Notice email by a Compliance Attorney, at a cost of \$684 per hour. The Commission estimates an additional one-hour burden for adding the notional amounts of trade options in a spreadsheet or similar program by a junior compliance specialist, at a cost of \$141 per hour. These would be recurring, annual costs.

Respondents/Affected Entities: 20.

Estimated average number of responses: 20 (one form per year per respondent).

Estimated total average annual burden on respondents: 2 hours

Frequency of collection: annually

Average total cost per response: \$826