SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-NEW

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.

The Commission is proposing a rule for the application of the Commission's margin requirements to cross-border transactions ("Proposed Rule"). The collection of information is necessary for the Commission to make "comparability determinations" as provided in the Proposed Rule and described below.

Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), P.L. 111-023, 124 Stat. 1376 (2010), amended the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq*., to add, as section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers ("SDs") and major swap participants ("MSPs"). Each SD and MSP for which there is a Prudential Regulator, as defined in section 1a(39) of the CEA, must meet margin requirements established by the applicable Prudential Regulator, and each SD and MSP for which there is no Prudential Regulator ("Covered Swap Entities" or "CSEs") must comply with the Commission's regulations governing margin on all swaps that are not centrally cleared.

With regard to the cross-border application of the Commission's margin rules, section 2(i) of the CEA provides the Commission with express authority over activities outside the United States relating to swaps when certain conditions are met. Section 2(i) of the CEA provides that the provisions of the CEA relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of [Title VII of the CEA].

Because margin requirements for uncleared swaps are critical in ensuring the safety and soundness of a CSE and to preserving the integrity of the financial markets, the Commission believes that its margin rules should apply on a cross-border basis in a manner that effectively addresses risks to the registered CSE and the U.S. financial system. At the same time, the Commission recognizes that non-U.S. CSEs and non-U.S. counterparties may be subject to comparable or different rules in their home jurisdictions. In accordance with principles of international comity, the Proposed Rule would allow CSEs subject to the Commission's margin

requirements to satisfy the Commission's margin requirements by complying with some or all of the relevant foreign jurisdiction's margin requirements to the extent that the Commission makes a determination that the foreign jurisdiction's requirements are comparable to the Commission's corresponding margin requirements (referred to as "substituted compliance"). In certain limited circumstances, non-U.S. CSEs would not be required to comply with the Commission's margin requirements for certain swap transactions with non-U.S. persons, subject to specified conditions.

Specifically, under section 23.160(c)(1) of the Proposed Rule, a CSE that is eligible for substituted compliance or a foreign regulatory agency that has direct supervisory authority over one or more covered swap entities that is responsible to administer the relevant foreign jurisdiction's margin requirements may request, individually or collectively, that the Commission make a determination that a CSE that complies with margin requirements in the relevant foreign jurisdiction would be deemed to be in compliance with the Commission's corresponding margin rules promulgated by the Commission (a "comparability determination"). Once a comparability determination is made for a jurisdiction, it would apply for all entities or transactions in that jurisdiction to the extent provided in the comparability determination, as approved by the Commission and subject to any conditions specified by the Commission. All CSEs, regardless of whether they rely on a comparability determination, remain subject to the Commission's examination and enforcement authority.

Under section 23.160(c)(2) of the Proposed Rule, a request for a comparability determination with respect to some or all of the Commission's margin requirements must include a submission to the Commission that includes, at a minimum, information describing any differences between the relevant foreign jurisdiction's margin requirements and international standards, and the specific provisions of the foreign jurisdiction that govern: (i) the transactions subject to the foreign jurisdiction's margin requirements; (ii) the entities subject to the foreign jurisdiction's margin requirements; (iii) the methodologies for calculating the amounts of initial and variation margin; (iv) the process and standards for approving models for calculating initial and variation margin models; (v) the timing and manner in which initial and variation margin must be collected and/or paid; (vi) any threshold levels or amounts; (vii) risk management controls for the calculation of initial and variation margin; (viii) eligible collateral for initial and variation margin; (ix) the requirements of custodial arrangements, including rehypothecation and the segregation of margin; (x) documentation requirements relating to margin; and (xi) the cross-border application of the foreign jurisdiction's margin regime. In addition, the Commission would expect the applicant, at a minimum, to describe how the foreign jurisdiction's margin requirements addresses each of the above-referenced elements of the Commission's margin requirements, and identify the specific legal and regulatory provisions that correspond to each element (and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element). The applicant must also describe the objectives of the foreign jurisdiction's margin requirements; the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the foreign jurisdiction's margin requirements, including the powers of the foreign regulatory authority or authorities to supervise, investigate, and discipline entities for compliance with the margin requirements and the ongoing efforts of the regulatory authority or authorities to detect, deter, and ensure compliance with the margin requirements. Further, the applicant must furnish copies of the foreign jurisdiction's

margin requirements (including an English translation of any foreign language document) and any other information and documentation that the Commission deems appropriate.

The collection of information that is proposed by this rulemaking is necessary to implement section 4s(e) of the CEA, which expressly authorizes the Commission to adopt rules governing margin requirements for SDs and MSPs that do not have a Prudential Regulator, and section 2(i) of the CEA, which provides the Commission with express authority over swaps activities in cross-border transactions when certain conditions are met. As noted above, section 4s(e) of the CEA mandates the adoption of rules establishing minimum initial and variation margin requirements for SDs and MSPs on all swaps that are not centrally cleared. The information collection would be necessary for the Commission to consider whether the requirements of the foreign rules are comparable to the applicable requirements of the Commission's rules in ensuring the safety and soundness of the CSE and are appropriate for the risks associated with the uncleared swaps held as a CSE.

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.

Persons requesting a comparability determination would be required to submit documentation to the Commission. As noted above, CSEs (i.e., SDs and MSPs that are subject to the Commission's margin rules but are not subject to a Prudential Regulator's jurisdiction) that are eligible for substituted compliance under the Proposed Rule, as well as foreign regulatory agencies that have direct supervisory authority to administer the foreign regulatory framework for uncleared swaps in the requested foreign jurisdiction, may make a request. The Commission will use this information to determine whether the relevant foreign jurisdiction's margin rules for uncleared swaps are comparable to the Commission's corresponding margin requirements. The SDs and MSPs may submit the required documentation electronically or by hard copy. The documentation will provide an analysis and comparison of the foreign jurisdiction's regulations to the Commission's regulations for the purpose of providing the Commission with information necessary to make a comparability determination to the extent that it determines that some or all of the relevant foreign jurisdiction's margin requirements are comparable to the Commission's corresponding margin requirements.

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 collection of information may be reported electronically. The Commission would permit SDs, MSPs and foreign regulatory agencies who are requesting a comparability determination to submit information to the Commission 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 collection of information includes the submission of information from SDs, MSPs and foreign regulatory agencies that are engaged in activities that implicate new regulatory requirements. This information would not have been previously submitted by the respondents to the Commission. Therefore, the required information is not already collected by the Commission for any other purpose, collected by any other agency from the affected respondents, 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 collection of information will not have a significant impact on small entities. The Commission notes that under its proposed margin rules, SDs and MSPs would only be required to collect and post margin on uncleared swaps when the counterparties to the uncleared swaps are either other SDs and MSPs or financial end users. The Commission has determined that SDs and MSPs are not small entities. Furthermore, any financial end users that may be indirectly impacted by the Proposed Rule would be similar to ECPs, and, as such, they would not be small entities. Further, to the extent that there are any foreign financial entities that would not be considered ECPs, the Commission expects that there would not be a substantial number of these entities significantly impacted by the Proposed Rule because most foreign financial entities would likely be ECPs to the extent they would trade in uncleared swaps. The Commission expects that only a small number of foreign financial entities that are not ECPs, if any, would trade in uncleared swaps.

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.

An SD, MSP or foreign regulatory agency is required to submit documentation in support of a request for a comparability determination only once. If the Commission did not receive information regarding a comparability determination, the Commission could not assess whether the foreign jurisdiction's margin rules for uncleared swaps are comparable to the Commission's corresponding margin requirements for uncleared swaps.

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;**

Not applicable. The documentation in support of a comparability determination would only need to be submitted once.

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

Not applicable.

- **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 statue 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.

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.

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

Not applicable. 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 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." 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.

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. The Commission estimates that the collection of information required by the regulations will impose a burden of 170 annual hours on an estimated 17 entities.

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.**

It is expected that respondents will utilize existing software, information technology and systems. Thus, the Commission believes that there will not be additional capital/startup costs or operational/maintenance costs incurred by SDs, MSPs or foreign regulatory agencies to report the information required by the regulations to the Commission.

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.

It is not anticipated that the final regulations will impose any additional costs to the Federal Government.

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

The regulations associated with this new collection information request are designed to enhance the safety and soundness of Covered Swap Entities and support the stability of the U.S. financial system, and to enable the Commission to evaluate the foreign jurisdiction's margin requirements for uncleared swaps to determine whether some or all of such requirements are comparable to the Commission's corresponding margin requirements. The collection of information would be a new collection of information for which the Commission is submitting a collection of information request to obtain a new Office of Management and Budget ("OMB") control number.

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

OMB Control Number 3038-NEW – Cross Border Application of the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

Reporting Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Annual Number of Burden Hours per Respondent	5. Estimated Average Burden Hour Cost[1]	6. Total Average Hour Burden Cost Per Respondent (4 x 5)	7. Total Annual Responses (2 x 3)	8. Total Annual Number of Burden Hours (2 x 4)	9. Total Annual Burden Hour Cost of All Responses (2 x 6)
23.160(c)	17	1	10	$380	$3,800	17	170	$64,600

[1] The Commission estimates that the total aggregate cost of preparing such submission requests would be $64,600, based on an estimated cost of $380 per hour for an in-house attorney. Although different registrants may choose to staff preparation of the comparability determination request with different personnel, Commission staff estimates that, on average, an initial request could be prepared and submitted with 10 hours of an in-house attorney's time. To estimate the hourly cost of an in-house attorney's attorney time, Commission staff reviewed data in SIFMA's Report on Management and Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by a factor of 5.35 to account for firm size, employee benefits and overhead. Commission staff believes that use of a 5.35 multiplier here is appropriate because some persons may retain outside advisors to assist in making the determinations under the rules.