

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

OMB CONTROL NUMBER 3038-0096

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, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.¹ Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to establish a comprehensive new regulatory framework for swaps. Section 727 of the Dodd-Frank Act specifically required that each swap subject to the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) jurisdiction be reported to a newly-created registered entity, the swap data repository (“SDR”). Section 728 of the Dodd-Frank Act specifically required the Commission to establish standards for swap data recordkeeping and reporting, including the data elements to be collected and maintained by SDRs for each swap. Section 729 of the Dodd-Frank Act required that at least one counterparty to each swap have an obligation to report data concerning the swap and provided for data reporting to the Commission for swaps not accepted by an SDR. On December 20, 2011, the Commission adopted 17 CFR 45 (“Part 45”) to establish swap data recordkeeping and reporting requirements mandated by the Dodd-Frank Act.

This supporting statement concerns the renewal of existing collections of information required by Part 45. Part 45 imposes recordkeeping and reporting requirements on the following entities: SDRs, swap execution facilities (“SEFs”), designated contract markets (“DCMs”), derivatives clearing organizations (“DCOs”), swap dealers (“SDs”), major swap participants (“MSPs”), and non-SD/MSP counterparties:

- Section 45.2 requires SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties to keep records of activities relating to swaps. Specifically, SEFs, DCMs, DCOs, SDs, and MSPs are required to keep complete records of all activities relating to their

¹ Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

business with respect to swaps. Non-SD/MSP counterparties are required to keep complete records with respect to each swap to which they are counterparty.

- Sections 45.3 and 45.4 require SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties to report data regarding swap transactions to SDRs. SEFs and DCMs are required to report certain information (swap creation data) once at the time of swap execution. DCOs, SDs, MSPs, and non-SD/MSP counterparties are required to report certain information (swap creation data) once, as well as other information (swap continuation data) throughout the life of a swap. Section 45.4 also requires swap counterparties, including SDs, MSPs, and non-SD/MSP counterparties, to report information concerning their corporate affiliations or company hierarchy relationships.
- Section 45.5 requires that an SDR, SEF, DCM, SD, or MSP report a unique swap identifier (“USI”) for each swap to the other registered entities and swap counterparties involved in that swap.
- Section 45.6 requires each SD, MSP, and non-SD/MSP counterparty to report level one and level two reference data.² The report is made once at the time of the first swap data report involving the SD, MSP, or non-SD/MSP counterparty. A similar report is required whenever an update or correction to the previously reported reference data is required.
- Section 45.7 requires that each swap subject to the Commission’s jurisdiction be identified in all recordkeeping and swap data reporting by means of a unique product identifier and product classification system (“UPI”), which shall be designated at a later date by the Commission. The Commission expects that this will result in a one-time retrieval burden for each SEF and DCM for each swap product traded on its platform, and a one-time retrieval burden for SDs, MSPs, and non-SD/MSP reporting counterparties for each swap product that they are required to report.
- Section 45.14 requires that SDRs develop protocols regarding the reporting and correction of erroneous information.

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.

²Level one reference data is the minimum information needed to identify, on a verifiable basis, the legal entity to which a legal entity identifier is assigned. Level two reference data is information concerning the corporate affiliations or company hierarchy relationships of the legal entity to which a legal entity identifier is assigned.

The Commission uses the data required to be reported by Part 45 to fulfill its regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention.

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 swap data required to be reported by Part 45 is required to be reported 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.

Prior to enactment of the Dodd-Frank Act, the Commission did not have authority to require swap data recordkeeping and reporting. The information required to be reported by respondents pursuant to Part 45 is not otherwise available to the Commission from any other source. There is no similar information collection by the Commission or other agencies. The information collection is not otherwise available from any other source. To the maximum extent possible, the information collection was designed to avoid duplication. In all cases where it was possible to leverage information collections contained in other rulemakings, the Commission elected not to impose collections that would increase burden.

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 Commission has previously established certain definitions of “small entities” to be used in evaluating the impact of Commission regulations on such entities in accordance with the Regulatory Flexibility Act (“RFA”). In its previous determinations, the Commission has concluded that SDRs, SEFs, DCMs, DCOs, SDs, and MSPs are not small entities for the purposes of the RFA. Although there are an estimated 30,000 non-SD/MSP swap counterparties, very few non-SD/MSP counterparties are required to report swap data pursuant to the final regulations. The regulations require reporting by a non-SD/MSP counterparty only with respect to swaps in which the other counterparty is not an SD or MSP, and the considerable majority of swaps involve as least one SD or MSP. Moreover, many non-SD/MSP counterparties may be Eligible Contract Participants (“ECPs”) as defined by the Commission’s regulations, and ECPs have previously been determined by the Commission to not be “small entities” for RFA

purposes. In addition, most end users and other non-SD/MSP counterparties who are regulated by the Employee Retirement Income Security Act of 1974 (“ERISA”), such as pensions funds, which are among the most active participants in the swap market, are prohibited from transacting directly with other ERISA-regulated participants. Therefore, the Commission has certified pursuant to 5 U.S.C. 605(b) that Part 45 does not have a significant impact on a substantial number of 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.

Failure to maintain the records or to report the swap data required by Part 45 would adversely affect the Commission’s ability to ensure that complete data concerning all swaps is maintained in SDRs and available to the Commission and other regulators as required by the Dodd-Frank Act. The information collection cannot be conducted less frequently without compromising the accuracy and timeliness of the data.

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;

Part 45 requires reporting directly to the Commission only in the exceptional case of a swap in an asset class for which no SDR accepts swap data. Such reporting will be required only when requested by the Commission and has not occurred since the Commission adopted Part 45 on December 20, 2011.

- 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. Part 45 does not require written responses to a collection of information in fewer than 30 days after receipt.

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

This question does not apply. Part 45 does not require the submission of any original documents or copies of documents. Part 45 requires electronic reporting.

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

Section 45.2(c) requires that records related to each swap be kept throughout the life of the swap and for a period of at least five years following the final termination of the swap. This retention period is required because swap transactions can continue to exist over substantial periods of time, during which their key economic terms can change. Accordingly, swaps must be monitored by the Commission and other financial regulators throughout their existence, pursuant to the Dodd-Frank Act.

- 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. Part 45 does 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. Part 45 does not require nor involve 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. Part 45 does not require nor 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's regulations require SDRs to maintain safeguards against the misappropriation or misuse of swap data. The Commission is prohibited (save for limited exceptions) from disclosing swap data pursuant to Section 8 of the CEA.

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 Commission affirmatively sought comment from the public concerning the renewal of existing collections of information required by Part 45. A copy of the solicitation of comment appeared in the *Federal Register* at 80 FR 47477 (Aug. 7, 2015). The Commission received no comments.

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 published a notice in the *Federal Register* soliciting public comment on the renewal of this collection.

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.

The Commission staff has continued to meet with affected parties throughout the life of the regulations.

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

This question does not apply. This information collection does not involve the provision of any payment or gift to respondents.

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

The Commission is required to provide confidentiality to respondents pursuant to the Freedom of Information Act, Privacy Act of 1974, CEA, and Commission regulations requiring the confidentiality of information.³ Section 8(a) of the CEA provides for the confidentiality of data and information except under the limited circumstances delineated therein.

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

³ See 17 CFR 145.

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. Part 45 does not require or request the provision 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.

The Commission estimates that all respondents incur a total of 445,910 annual burden hours as a result of this collection of information. The hour burden for each respondent varies widely because Part 45, as detailed in the response to Question 1, imposes different recordkeeping and reporting requirements on the estimated 30,210 respondents based upon their classification as an SDR, SEF, DCM, DCO, SD, MSP, or non-SD/MSP counterparty. Additionally, the burden incurred by each respondent varies in relation to the volume of swap activity conducted by that respondent. Respondents associated with high levels of swap activity

will generally incur higher swap recordkeeping and reporting burdens than respondents associated with a lower level of swap activity. Respondents' swap activity levels generally correlate to their classification as an SDR, SEF, DCM, DCO, SD, MSP, or non-SD/MSP counterparty. The Commission has therefore estimated the hour burden separately for each potential classification of respondent: SDR, SEF, DCM, DCO, SD, MSP, or non-SD/MSP counterparty.

*Section 45.2*⁴ SEFs, DCMs, DCOs, SDs, and MSPs (195 respondents) have higher levels of swap recording activity than non-SD/MSP counterparties. The Commission estimates that these 195 respondents incur an annual burden of 700 hours per respondent and a technological maintenance cost of \$50,000 to comply with the recordkeeping requirements of Section 45.2. With respect to non-SD/MSP counterparties, the Commission estimates that these respondents incur an annual burden of 165 hours per respondent and a technological infrastructure maintenance cost of \$25,000.

Respondents will also incur burdens associated with periodically retrieving records required to be maintained by Section 45.2. The Commission estimates that SEFs, DCMs, DCOs, SDs, and MSPs incur an annual burden of 175 hours per respondent to retrieve records. Non-SD/MSP reporting counterparties are estimated to incur an annual burden of 115 hours per respondent to retrieve records.

Sections 45.3 and 45.4 The electronic reporting required by Sections 45.3 and 45.4 is accomplished in an automated manner by respondents' computer systems. The burden hours incurred by respondents to comply with these Sections relates to the hours necessary to oversee, maintain, and utilize respondents' automated reporting functionality. SEFs, DCMs, DCOs, SDs, and MSPs have high levels of reporting activity. The Commission estimates that their average annual burden is 2,080 hours per SEF, DCM, DCO, SD, or MSP.⁵ The Commission believes that this is a reasonable assumption due to the volume of swap transactions that are processed or entered into by these entities, the varied nature of the information required to be reported, and the frequency with which information is required to be reported. The Commission notes, however, that these burdens should not be considered additional to the costs of compliance with Part 43. The basic data reporting technology, processes, and personnel necessary to fulfill the

⁴ The Commission has determined that certain registrants are already subject to this recordkeeping requirement by a separate Commission regulation for which the Commission has previously received approval by OMB. To avoid duplication of PRA burdens, these costs are not being accounted for in the total annual hour burden associated with this information collection.

⁵ The Commission estimated 2,080 hours by assuming that a significant number of SEFs, DCMs, DCOs, SDs and MSPs will dedicate the equivalent of at least one full-time employee to ensuring compliance with the reporting obligations of Sections 45.3 and 45.4 (2,080 hours = 52 weeks x 5 days x 8 hours).

requirements of Part 43 encompasses the data stream necessary for regulatory reporting under Part 45.⁶

SEFs, DCMs, DCOs, SDs, MSPs and Non-SD/MSP counterparties who are required to submit reports pursuant to Sections 45.3 and 45.4 (an estimated 1,195 respondents) incur the additional burden of maintaining an internal order management system (“OMS”) and the personnel hours needed to maintain a compliance program in support of that system. The Commission estimates that these 1,195 respondents incur an annual burden of 175 hours per respondent to maintain their OMSs and the associated compliance and support programs.

SEFs, DCMs, DCOs, SDs, MSPs and Non-SD/MSP counterparties who submit reports pursuant to Sections 45.3 and 45.4 (an estimated 1,195 respondents) incur the additional burden of maintaining connectivity to an SDR for the purposes of effecting reporting. As connectivity costs have been accounted for in the information collection associated with Part 43, for which the Commission has previously received approval by OMB, the Commission is not including those costs so as to avoid duplication of PRA burdens. In the event that there is a swap asset class for which no SDR accepts swap data, the regulations provide that the Commission may require such swap data to be reported to the Commission. With respect to all reporting counterparties, including SEFs, DCOs, DCMs, SDs, MSPs, and non-SD/MSP reporting counterparties, the Commission estimates that the annual cost to maintain connectivity to the Commission would be approximately \$100,000 for each respondent.

Section 45.5 The reporting of USIs is completed automatically by respondents’ electronic computer systems. USI-related costs are highest for SEFs, DCOs, and DCMs because they create the greatest number of USIs. The Commission estimates that SEFs, DCOs, and DCMs (70 respondents) incur an annual burden of 470 hours per respondent to create and transmit USIs to counterparties and other registered entities.

For off-facility swaps with an SD or MSP reporting counterparty, the Commission estimates SDs and MSPs (125 respondents) incur an annual burden of 353 hours to create and transmit USIs to counterparties and other registered entities.

For off facility swaps between non-SD/MSP counterparties, the Commission estimates that SDRs (15 respondents) incur an annual burden of 235 hours to create and transmit USIs to counterparties and other registered entities.

⁶ The Commission has determined that certain registrants already incur the costs associated with 45.3 and 45.4 to comply with a separate Commission regulation, Part 43, for which the Commission has previously received approval by OMB. To avoid duplication of PRA burdens, these costs are not being accounted for in the total annual hour burden associated with this information collection.

Section 45.6 The report required by Section 45.6 is made once, prior to the time of the first swap data report to an SDR involving the SD, MSP, or non-SD/MSP counterparty. A similar report is made whenever an update or correction to the previously reported reference data is required. For any such report, the estimated number of burden hours is approximately two hours per entity, excluding customary and usual business practices. The number of reports made per year is estimated to vary between zero and four, depending on when the SD, MSP, or non-SD/MSP counterparty is required to make either the initial report or a report of an update or correction. Thus, the estimated annual burden per entity varies between zero and eight burden hours.

Section 45.7 The reporting and recordkeeping requirements of Section 45.7 will not be imposed on respondents until the Commission designates a UPI system. To date, the Commission has not proposed a UPI system. As with USIs, the Commission anticipates that the reporting of UPIs will be automatically completed by respondents' electronic computer systems. Until such time as a UPI system is designated, however, the Commission cannot estimate the annual burden hours associated with such system. The Commission will establish a burden estimate associated with the collection of information from Section 45.7 on the designation of a UPI system.

Section 45.14. Section 45.14 requires SDRs to develop protocols regarding the reporting and correction of erroneous information. SDRs incur annual costs to comply with this regulation, including data processing, systems maintenance, and personnel hours to format data. However, the burden associated with Section 45.14 is contained in Part 43, for which the Commission has already received approval from OMB. To avoid duplication of PRA burdens, these costs are not being accounted for in the estimated total annual hour burden associated with this information collection.

The total annual burden hour cost for this collection is estimated to be \$88,130,242. See Attachment 1 for cost estimates associated with the burden hours calculated by this Question 12. In calculating the cost figures contained in Attachment 1, the Commission estimated the appropriate wage rate based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). Commission staff arrived at an hourly rate of \$75.98 using figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): "programmer (senior)" (30% weight); "programmer" (30%);

“compliance advisor (intermediate)” (20%); “systems analyst” (10%), and “assistant/associate general counsel” (10%).

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.

As discussed in response to Question 12, the estimated annual cost burden to respondents was estimated to be approximately \$88 million.

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 Commission will have the following costs relating to the information collections required by Part 45 of the Commission's regulations: (1) costs relating to the need of Commission staff to review and analyze the collected documents and information; (2) costs relating to the technology that must be set up and maintained by the Commission to receive and process the information collected.

With respect to Commission staff analyzing and reviewing the collected data/information, existing staff may be used to perform this function. However, Commission staff estimates that potentially 15 employees may eventually be dedicated full-time to analysis of the information/data being collected. The estimated annual cost to the Commission per new hire is \$120,829.⁷ Therefore, the total annual aggregate staff cost to the Commission is \$1,812,435.

With respect to the technology necessary for the Commission to receive and process the information collected, Commission staff believes the cost of this technology to be between \$4 million and \$7 million annually.⁸

Therefore, the total cost (staff plus technology) is between \$5.8 million and \$8.8 million annually.

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

During 2012, the Commission submitted a supporting statement with attachment that estimated the total annual burden-hours for the collection to be 1,342,860 hours, with an associated annual burden-hour cost of \$150,394,058.⁹ The Commission now estimates a recurring burden of 445,910 hours, with an associated cost of \$88,130,242.

The significant decrease in estimated burden hours and associated costs is primarily due to the significant one-time costs incurred by respondents during 2012 to design and implement systems

⁷ This figure is a composite of the salaries for economists (Grade 11-13) and attorneys (Grade 11-14) in the Commission's Division of Market Oversight. In obtaining the composite, Commission staff used the CFTC 2015 Washington Pay Chart (with adjusted locality pay). This figure does not include employee benefits.

⁸ This number was obtained in consultation with CFTC's IT staff.

⁹ To the extent the 2012 PRA Submission for this collection contained total burden and cost estimates that were different from the total burden and cost estimates contained in the supporting statement submitted at that time, this was done in error.

and processes to effectuate the electronic reporting required by this collection. This decrease was foreseen by the Commission and is discussed at length in the 2012 supporting statement.

The Commission estimates that respondents will submit 7,209,330,000 total annual responses. This new estimate is higher than the estimate submitted by the Commission during 2012 and is based upon the number of reports the respondents are currently making to SDRs.

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.

As required in Dodd-Frank Act Section 727, the Commission will aggregate the data provided to SDRs and provide a written report to the public on a semiannual basis. There is no end date for these reports issued by the Commission. As required by the Dodd-Frank Act, the reports will contain information relating to trading and clearing in the major swap categories as well as market participants and developments in new products. In preparing the reports, the Commission is required to consult with the office of the Comptroller of the Currency, the Bank for International Settlements, and other regulatory bodies as necessary.

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.