

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

OMB CONTROL NUMBERS 3038-0068

**Proposal to Amend the Definition of “Material Terms” for Purposes of Swap Portfolio
Reconciliation.**

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 September 11, 2012, the Commission published in the Federal Register final rules § 23.500 through § 23.505 establishing requirements for the timely and accurate confirmation of swaps, the reconciliation and compression of swap portfolios, and documentation of swap trading relationships between swap dealers (“SDs”), major swap participants (“MSPs”), and their counterparties. These regulations were promulgated by the Commission pursuant to the authority granted under sections 4s(h)(1)(D), 4s(h)(3)(D), and 4s(i) of the Commodity Exchange Act (the “CEA”), as amended by the Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act,” Pub L. No. 111-203, 124 Stat. 1376 (2010)), which, among other things, directed the Commission to prescribe regulations for the timely and accurate confirmation, processing, netting, documentation and valuation of all swaps entered into by SDs and MSPs, and the Commission’s general rulemaking authority under Section 8a(5) of the CEA.

Pursuant to this authority, the Commission promulgated regulations 23.500-23.505, which obligate swap dealers and major swap participants to develop and retain written swap trading relationship documentation. Those regulations established requirements for swap dealers and major swap participants regarding swap confirmation, portfolio reconciliation, and portfolio compression. Confirmation, portfolio reconciliation, and portfolio compression are important, post-trade processing mechanisms for reducing risk and improving operational efficiency.

Under § 23.502, SDs and MSPs must reconcile their swap portfolios with one another and provide non-SD and non-MSP counterparties with regular opportunities for portfolio reconciliation. Section 23.500(i) defines the term, “portfolio reconciliation,” as “any process by which the two parties to one or more swaps: (1) exchange the terms of all swaps in the swap portfolio between the counterparties; (2) exchange each counterparty’s valuation of each swap in the swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and (3) resolve any discrepancy in material terms and valuations.”

Section 23.500(g) defines “material terms” to mean “all terms of a swap required to be reported in accordance with part 45 of this chapter.” Thus, portfolio reconciliation seeks to enable “the swap market to operate efficiently and to reduce systemic risk” by requiring counterparties

periodically to (1) exchange the terms of their mutual swaps, and (2) locate and resolve discrepancies in material terms of mutual swaps. In particular, the Commission recognized that “portfolio reconciliation [would] facilitate the identification and resolution of discrepancies between the counterparties with regard to valuations of collateral held as margin.”

The proposed regulation would amend the definition in § 23.500(g) of the Commission regulations so that the term “material terms” (which is used in § 23.500(i)(3)) is defined as all terms of a swap required to be reported in accordance with part 45 of the CEA other than the Proposed Excluded Data Fields.¹ As noted above, clause (3) of the definition of “portfolio reconciliation” in § 23.500(i) requires the parties to resolve any discrepancy in “material terms” and valuations. The proposed change would clarify that SDs and MSPs would not need to include the Proposed Excluded Data Fields in any resolution of discrepancies of material terms or valuations.

The Commission’s proposal would alleviate the burden of resolving discrepancies in terms of a swap that are not relevant to the ongoing rights and obligations of the parties and the valuation of the swap, or to the Commission’s regulatory mission. The proposed amendment to Regulation 23.500(g) would reduce the number of “material terms” that counterparties would need to resolve for discrepancies in portfolio reconciliation exercises, but would not eliminate the portfolio reconciliation requirement itself.

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.

Swap entities (SDs and MSPs) will use the data to reconcile their swap portfolios with one another and provide non-SD and non-MSP counterparties with regular opportunities for portfolio reconciliation. Also, Commission staff will use the information required to be preserved when conducting the Commission’s examination and oversight program with respect to the affected registrants.

¹ The Commission is proposing to amend the definition of “material terms” in § 23.500(g) to specifically exclude the following data fields from the definition of “material terms” (referred to as the “Proposed Excluded Data Fields”):

1. An indication that the swap will be allocated;
2. If the swap will be allocated, or is a post-allocation swap, the legal entity identifier of the agent;
3. An indication that the swap is a post-allocation swap;
4. If the swap is a post-allocation swap, the unique swap identifier;
5. Block trade indicator;
6. With respect to a cleared swap, the execution timestamp;
7. With respect to a cleared swap, the timestamp for submission to SDR;
8. Clearing indicator; and
9. Clearing venue.

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 regulations require that recordkeeping generally be performed in accordance with Commission Regulation 1.31, which permits the use of electronic storage media.

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 information sought is not duplicative of existing information. The only effect of the proposed amendment to Regulation 23.500(g) would be to slightly reduce the number of terms that counterparties would have to resolve for discrepancies in portfolio reconciliation exercises. It would not otherwise change the information that is exchanged by counterparties and otherwise recorded. Therefore, this proposed amendment is not seeking new, previously uncollected information that is duplicative of an existing 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 the required information does not involve any small businesses or 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 conduct the collection required by the regulations as proposed would adversely affect the Commission's ability to ensure the affected registrants' compliance with their obligations under the CEA and Commission regulations to document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises. Failure to comply with the reporting requirements established by the regulation would prohibit the Commission from receiving timely notification of unresolved swap valuation disputes.

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;**

Commission regulation require swap entities (SDs, MSPs), and their counterparties to engage in portfolio reconciliation at regular intervals, which may occur more often than quarterly, depending on the size of the swap portfolio. If the swap entities and counterparties do not

conduct portfolio reconciliation as provided for in the regulations, the entities and the Commission would not be able to appropriately identify and reduce overall risk to the markets.

- **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 proposed amendment to Commission regulation 23.500(g) does 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 proposed amendment to Commission regulation 23.500(g) does not impose any requirements on swap dealers, major swap participants, and other market participants beyond the recordkeeping requirements set forth in the final regulations mandate that records be maintained in accordance with existing Commission Regulation 23.203 (and, by extension, Commission regulation 1.31), which expressly requires that:

All records required to be kept by the Act and by Commission regulations shall be kept for a period of five years from the date the record was made and shall be readily accessible during the first two (2) years of the five-year period. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator.

- **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 proposed amendment to Commission regulation 23.500(g) neither requires nor involves 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 proposed amendment to Commission regulation 23.500(g) neither requires nor involves 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 amendment to Commission regulation 23.500(g) does not require a 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.**

This question does not apply. In any event, the Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations are set forth in the Commission's regulations at Parts 145 and 147 of title 17 of the Code of Federal Regulations ("CFR"), 17 CFR Parts 145 and 147. 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.

- 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. 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).**

In the proposed *Federal Register* release, the Commission is seeking public comment on the information collection as it relates to the proposed amendment to Commission regulation 23.500(g). In addition to the requests set forth in the Federal Register, the Commission may engage persons outside of the agency – through meetings and other forums – to gain additional information.

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 an assurance of confidentiality, only to the extent permitted by law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act (CEA), which strictly prohibits the Commission, unless specifically authorized by the CEA, 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.” Additionally, the Commission has prescribed procedures whereby persons may request confidential treatment of information submitted to the agency. Those procedures are set forth in Commission regulations at Parts 145 and 147 of title 17, CFR, 17 CFR Parts 145 and 147..

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 proposed amendment to Commission regulation 23.500(g) does not require 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.**

See Attachment A.

The proposed amendment of Commission regulation 23.500(g) is a modification of a regulation that was promulgated under the Confirmation NPRM² and finalized as part of the Confirmation,

² 75 FR 81519 (Dec. 28, 2010).

Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants final rule.³

As delineated below, with respect to the rules proposed in the Confirmation NPRM, the Commission originally estimated the burden to be 1,282.5 hours, at an annual cost of \$128,250 for each SD and MSP, and the aggregate burden cost for all registrants is 160,312.5 burden hours and \$16,031,250.⁴

The rule change proposed herein would reduce the number of “material terms” that counterparties would need to resolve for discrepancies in portfolio reconciliation exercises, but would not eliminate the portfolio reconciliation requirement itself. However, the Commission believes that the changes proposed to the regulatory definition of “material terms” described herein would reduce the time burden for portfolio reconciliation by one burden hour for each SD and MSP, which would reduce the annual burden to 1,281.5 hours per SD and MSP. The Commission believes that the proposed rule would result in one hour of less work for computer programmers for SDs and MSPs because the programmers who have to match the needed data fields from two different databases would have fewer data fields to obtain and resolve for discrepancies. Furthermore, given that there are currently 106 provisionally registered SDs and MSPs, the proposed rule, if adopted, would result in an aggregate burden of 135,839 burden hours.

The Commission previously estimated that, assuming 1,282.5 annual burden hours per SD and MSP, the financial cost of its regulations on each SD and MSP would be \$128,250.⁵ Therefore, based on those prior estimates, a one-hour reduction in the annual burden hours for each SD and MSP would result in a financial cost of \$128,150 per registrant.⁶ Accordingly, the Commission estimates that, if the proposed rule is adopted, the aggregate financial burden of its regulations on SDs and MSPs would be \$13,583,900. (The Commission originally had estimated that, if 125 entities had registered as SDs and MSPs, the aggregate burden would be \$16,031,250.)

³ 77 FR 55904 (Sept. 11, 2012). This final rulemaking release also finalized regulations originally proposed in the Documentation NPRM, 76 FR 6715 (Feb. 8, 2011), and the Orderly Liquidation NPRM, 76 FR 6708 (Feb. 8, 2011).

⁴ In the Confirmation NPRM, the Commission stated that the annual cost for each SD and MSP would be \$1,282,250. This was a scrivener’s error. See 75 FR at 81527.

⁵ In 2011, the Commission conservatively estimated, based on information from the Bureau of Labor Statistics, that the average hourly wage for a computer programmer for an SD or MSP would be \$60. See Confirmation NPRM, 75 FR at 6724. Today, the Commission is conservatively estimating that a computer programmer for an SD or MSP would earn approximately \$100 per hour. See Bureau of Labor Statistics (2014 wages for computer programmers), <http://www.bls.gov/oes/current/oes151131.htm>. The Commission realizes that \$100 is above the listed average hourly wage for computer programmers but is following its custom of erring on the side of over-estimating the potential salaries at SDs and MSPs. See, e.g., Confirmation NPRM, 75 FR at 6723-24 (estimating hourly wages for financial managers and computer programmers at levels above the average hourly wages listed on official reports).

⁶ The overall burden cost for each registrant would be reduced by \$100.

The Commission does not believe there will be any start-up costs in connection with the proposed amendment to regulation 23.500(g).

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 not anticipated that the proposed amendment to Commission regulation 23.500(g) will impose any additional costs on SDs and MSPs.

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 proposed amendment to Commission regulation 23.500(g) 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 proposed amendment to Regulation 23.500(g) would reduce the number of “material terms” that counterparties would need to resolve for discrepancies in portfolio reconciliation exercises . The Commission believes that the changes proposed to the regulatory definition of “material terms” described herein would reduce the time burden for portfolio reconciliation by one burden hour for each SD and MSP, which would reduce the annual burden to 1,281.5 hours per SD and MSP. There are currently 106 provisionally registered SDs and MSPs and the Commission believes that the proposed rule would result in one hour of less work for computer programmers for SDs and MSPs because the programmers who have to match the needed data fields from two different databases would have fewer data fields to obtain and resolve for discrepancies.

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

**Part 23 – Proposal to Amend the Definition of “Material Terms” for Purposes of Swap
Portfolio Reconciliation**

OMB CONTROL NUMBERS 3038-0068

Number of Registrants: 106

Frequency of Recordkeeping: Daily, weekly, quarterly, annually, or as needed

Start-up Cost Per Registrant: \$0

Aggregate Start-Up Cost: \$0

Estimated Average Burden Hours Per Registrant: 1,281.5

Estimated Aggregate Burden Hours: 135,839

Estimated Annual Cost Per Registrant: \$128,150

Estimated Aggregate Annual Cost: \$13,583,900

See methods of calculation listed in response to question 12 of this Supporting Statement