

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

**Regulations Establishing and Governing the Duties of
Swap Dealers and Major Swap Participants**

OMB CONTROL NUMBER 3038-0084

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 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010)) amends the Commodity Exchange Act (CEA) to add section 4s(j) which imposes certain duties upon swap dealers (SDs) and major swap participants (MSPs) as part of the overall business conduct regime to which they are subject. Among the obligations imposed by section 4s(j) are the requirements that SDs and MSPs: (1) establish risk management procedures adequate for managing their day-to-day business; (2) monitor their trading to prevent violations of applicable position limits; and (3) establish internal systems and procedures to obtain the information needed to perform their duties and to provide such information to the Commission.

Accordingly, the Commission adopted regulations 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery), 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust considerations) that require SDs and MSPs to develop a risk management program (including a plan for business continuity and disaster recovery and policies and procedures designed to ensure compliance with applicable position limits). The reporting and recordkeeping obligations imposed by these regulations include: (1) drafting, filing, distributing, and updating written policies and procedures designed to monitor and manage the risks associated with the swap activities of the SD or MSP (including, but not limited to, policies and procedures: regarding the SD or MSP's risk tolerance limits, to identify and account for the risks of new products, to monitor and manage specifically delineated types of risk, regarding the SD or MSP's use of central counterparties, to monitor for and prevent violations of applicable position limits, for business continuity and disaster recovery, and to distribute and to detect violations of the SD or MSP's risk management program); (2) on a quarterly basis, drafting and filing reports describing the market, credit, liquidity, foreign currency, legal, operational, settlement and other applicable risk exposures of the SD or MSP and related information; (3) on an annual basis, documenting the results of the required testing of the firm's risk management program; (4) on an annual basis, documenting the required position limit training and position limit compliance audit; (5) on a quarterly basis, documenting position limit testing and compliance; (6) as applicable, documenting position limit violations and reporting such violations to the Commission; (7) documenting the required testing and audit of the business continuity and disaster recovery plan and the provision of emergency contact information to the

Commission; and (8) as applicable, documenting the required risk assessment of new products.

The information collection is necessary to implement the CEA, as amended by the Dodd-Frank Act. Specifically, it is essential to ensuring that SDs and MSPs maintain adequate and effective risk management programs and policies and procedures to ensure compliance with position limits.

- 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.**

Commission staff will use the information collected when conducting the Commission's examination and oversight program to evaluate the completeness and effectiveness of the risk management, business continuity and disaster recovery and position limit compliance procedures that SDs and MSPs are required to implement.

- 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 that is required to be provided to the Commission may be submitted electronically. The regulations require that recordkeeping be performed in accordance with Commission regulation 1.31, which permits the use of electronic storage.

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

The required information is not already collected by the Commission for any other purpose, collected by any other agency, 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.**

This collection of information does not involve 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 maintain the procedures, reports, and other records required by the regulations would adversely affect the Commission's ability to evaluate the completeness and effectiveness of the risk management, business continuity and disaster recovery, and position limit procedures that SDs and MSPs are required to implement and to timely identify and react to position limit violations and inordinate risk exposure levels maintained by Commission registrants.

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 as the reporting to the Commission contemplated by the regulations generally would not be performed more frequently than quarterly. While the regulations do require notification to the Commission in the event that applicable position limits are violated and such violations may occur more often, the Commission believes that it is necessary and appropriate for the safety and soundness of the applicable markets for the Commission to be alerted promptly to position limit violations.

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

In addition to the regular reporting and recordkeeping requirements set forth above, Commission regulation §23.606 requires SDs and MSPs to make information related to their swaps; swaps trading operations, mechanisms and practices; and financial integrity and risk management protections as well as other information related to their trading in swaps available promptly to the Commission, upon request. This regulation is mandated by the Dodd-Frank Act and is necessary for the Commission to effectively carry out its oversight and examination responsibilities.

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

This question does not apply. The regulations do not require the submission of multiple copies of required documents.

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

Commission rule 1.31 requires that:

All books and records required to be kept by the [Commodity Exchange] Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

- **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 regulations do not require nor involve the use of 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 regulations 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 regulations do 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.**

The Commission has promulgated regulations to protect the confidentiality of the information collected from the affected registrants. They are set forth in 17 CFR Part 145.

- 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.**

A copy of the Federal Register notice soliciting comments on this information collection (80 FR 74766, November, 30, 2015) is attached. No comments were received.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

As set forth above, the Commission affirmatively sought comments on the extension of information collection requirements described herein.

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. No such decision was made.

- 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 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.” The Commission has procedures to protect the confidentiality of a respondent’s data. These are set forth in the Commission’s regulations at part 145 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.**

This question does not apply. The regulations do not request nor 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

In light of the current number of Commission-registered SDs and MSPs, the total number of respondents (combined SDs and MSPs) is estimated to be 105 and the aggregate hour burdens set forth below are based upon that estimate. As delineated below, the hour burden, per respondent, associated with the regulations, is estimated to be 1,148.5 hours, at a cost of \$114,850 annually. As set forth above, this burden would result from: (1) drafting, filing, distributing, and updating written policies and procedures designed to monitor and manage the risks associated with the swap activities of the SD or MSP (including, but not limited to, policies and procedures: regarding the SD or MSP's risk tolerance limits, to identify and account for the risks of new products, to monitor and manage specifically delineated types of risk, regarding the SD or MSP's use of central counterparties, to monitor for and prevent violations of applicable position limits, for business continuity and disaster recovery, and to distribute and to detect violations of the SD or MSP's risk management program); (2) on a quarterly basis, drafting and filing reports describing the market, credit, liquidity, foreign currency, legal, operational, settlement and other applicable risk exposures of the SD or MSP and related information; (3) on an annual basis, documenting the results of the required testing of the firm's risk management program; (4) on an annual basis, documenting the required position limit training and position limit compliance audit; (5) on a quarterly basis, documenting position limit testing and compliance; (6) as applicable, documenting position limit violations and reporting such violations to the Commission; (7) documenting the required testing and audit of the business continuity and disaster recovery plan and the provision of emergency contact information to the Commission; and (8) as applicable, documenting the required risk assessment of new products.

The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$100.00 per hour. The Commission believes that this is an appropriate salary estimate for purposes of this regulation.

In support of this determination, the Commission notes that the salary estimate is based upon May 2014 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States¹, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage Industry," which is \$96.49; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$87.16; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$43.98.² The Commission also notes that, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that some SDs or MSPs may be large financial institutions whose employees' salaries may exceed the mean wage. The Commission also observes that the Securities Industry and Financial Markets Association's Report on "Management & Professional Earnings in the Securities Industry – 2013" estimates the average wage of a compliance attorney or compliance staffer (including chief compliance officers and directors of compliance) in the United States at only \$53.71 per hour. The Commission recognizes that some SDs and MSPs may hire outside

¹ See http://www.bls.gov/oes/current/oes_nat.htm.

²

counsel with expertise in the various regulatory areas covered by the combined final regulations and that outside counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fulfill a requested assignment. While the Commission is uncertain about the billing rates that these respondents may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Any determination to use outside counsel, however, is at the discretion of the SD or MSP.

The estimated burden is:

Drafting, Filing, Updating and Distributing Risk Management Program (including Position Limit Procedures and Business Continuity and Disaster Recovery Plan)

Number of registrants: 105

Estimated number of responses: 105

Estimated total annual burden per registrant: 900 hours

Frequency of collection: one-time filing with the Commission, annual distribution, updating as needed

Total annual burden: 94,500 burden hours [105 registrants x 900 hours]

Quarterly Risk Exposure Reports

Number of registrants: 105

Estimated number of responses: 420 [105 registrants x 4 reports]

Estimated total annual burden per registrant: 32 hours

Frequency of collection: quarterly

Total annual burden: 3,360 burden hours [105 registrants x 32 hours]

Annual Documentation of Risk Management Testing

Number of registrants: 105

Estimated number of responses: 105 [105 registrants x 1 test]

Estimated total annual burden per registrant: 200 hours

Frequency of collection: annual

Total annual burden: 21,000 hours [105 registrants x 200 hours]

Documentation of Annual Position Limit Compliance Training and Audit

Number of registrants: 105

Estimated number of responses: 105

Estimated total annual burden per registrant: 2 hours

Frequency of collection: annually

Total annual burden: 210 hours [105 registrants x 2 hours]

Quarterly Documentation of Position Limit Compliance

Number of registrants: 105

Estimated number of responses: 420 [105 registrants x 4 reports]

Estimated total annual burden per registrant: 10 hours

Frequency of collection: quarterly

Total annual burden: 1,050 hours [105 registrants x 10 hours]

Documentation of Position Limit Violations

Number of registrants: 105

Estimated number of responses: 210 [105 registrants x 2 documents]

Estimated total annual burden per registrant: .5

Frequency of collection: as needed

Total annual burden: 52.5 hours [105 registrants x .5 hours]

Filing Emergency Contact Information and Annual Documentation of Business Continuity Testing

Number of registrants: 105

Estimated number of responses: 105

Estimated total annual burden per registrant: 1 hour

Frequency of collection: annual

Total annual burden: 105 hours

Documentation of Risk Assessment of New Products

Number of registrants: 105

Estimated number of responses: 525 [105 registrants x 5 documents]

Estimated total annual burden per registrant: 3 hours

Frequency of collection: as needed

Total annual burden: 315 hours [105 registrants x 3 hours]

Based upon the above, the aggregate cost for all registrants is 120,592.5 burden hours and \$12,059,250 [120,592.5 x \$100 per hour].

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.**

The information collections required by the regulations would not involve any capital or start-up capital, operations or maintenance costs as the Commission anticipates that these costs have already been incurred by the 105 SD and MSP registrants and are part of customary or usual business practices.

- 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 estimates that its staff expends 5,625 hours per year reviewing documents required to be submitted to the Commission pursuant to the regulations (*e.g.*, the written risk management policies and procedures and updates thereto, the quarterly risk exposure reports, position limit violation notifications, emergency contact notifications, etc.) Based upon an average salary of \$58 per hour, the annualized cost to the Federal Government is estimated at \$326,250.

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

In light of the current number of Commission-registered swap dealers and major swap participants, the total number of respondents (combined swap dealers and major swap participants) is being reduced from 125 to 105.

- 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 – Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

OMB Collection File 3038-0084

Number of Respondents	105
Estimated Average Burden Hours Per Respondent	1,148.5
Estimated Annual Cost Per Respondent	\$114,850
Estimated Aggregate Burden Hours	120,592.5
Estimated Aggregate Cost	\$12,059,250
% of Responses Collected Electronically	100

Frequency of Reporting **Annually, quarterly or on occasion**

Requirement	Estimated # of Respondents Per Year	Estimated # of Responses Per Respondent	Total #Annual Responses	Estimated Total Annual Burden Per Registrant	Estimated Total # of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
<u>Recordkeeping and Reporting</u> Risk Mgt. Program	105	1	105	900	94,500	90,000
<u>Recordkeeping and Reporting</u> Quarterly Risk Exposure Reports	105	4	420	32	3,360	3,200
<u>Recordkeeping</u> Annual Risk Mgt. Testing	105	1	105	200	21,000	20,000
<u>Recordkeeping</u> Annual Position Limit Training	105	1	105	2	210	200
<u>Recordkeeping</u> Quarterly Documentation of Position Limit Compliance	105	4	420	10	1,050	1,000
<u>Recordkeeping and Reporting</u> Documentation	105	2	210	.5	52.5	50

and Reporting of Position Limit Violations						
Recordkeeping and Reporting Documentation of Emergency Contact Info and Business Continuity Testing and Audit	105	1	105	1	105	100
Recordkeeping New Product Assessment New Products	105	5	525	3	315	300
Total				1,148.5	120,592.5	\$114,850