

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

Reporting, Recordkeeping, and Daily Trading Records Requirements
For Swap Dealers and Major Swap Participants

OMB CONTROL NUMBER 3038-0087

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 Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to add section 4s(f) and 4s(g) which establish certain reporting, recordkeeping, and daily trading records requirements for swap dealers (SDs) and major swap participants (MSPs). Specifically, section 4s(f) authorizes the Commission to promulgate books and records and reporting requirements for SDs and MSPs. It also expressly obligates SDs and MSPs to maintain records of all activities related to their swaps businesses and to make reports regarding their transactions, positions and financial condition, as required by such regulations. Section 4s(g) requires SDs and MSPs to maintain daily trading records of their swaps that contain any information prescribed by Commission regulations; all related records (including records of related cash and forward transactions); all recorded communications (including electronic mail, instant messages, and recordings of telephone calls); and a complete audit trail for conducting comprehensive and accurate trade reconstruction. Section 4s(g) also requires that the daily trading records for each swap transaction be identifiable by transaction and by counterparty.

Accordingly, the Commission adopted regulations 23.201-23.205. The regulations impose certain recordkeeping and reporting obligations upon swaps dealers and major swap participants. The regulations generally require SDs and MSPs to maintain transaction and position records of their swaps (including daily trading records) and to maintain specified business records (including records related to the governance and financial status of the SD or MSP, complaints received by such registrants and such registrant's marketing and sales materials). It also requires SDs and MSPs to report certain swap transaction data to swap data repositories, to satisfy certain real time public reporting requirements, and to maintain records of information reported to swap data depositories and for real time reporting purposes.

As discussed further below, the additional information collection burden arising from the regulations primarily is restricted to the costs associated with the affected registrants' obligation to maintain records related to their transactions, positions, complaints, and marketing communications. The Commission does not anticipate that the reporting obligations set forth in the rules would result in any extra cost to SDs and MSPs beyond the expenditures already accounted for in the final regulations for swap data recordkeeping and reporting and for real-time

public reporting of swap transaction data.

The information collection obligations imposed by the regulations are necessary to implement the above-referenced provisions of the CEA, including ensuring that each SD and MSP maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction.

- 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 required to be preserved or reported when conducting the Commission's examination and oversight program with respect to the affected registrants.

- 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.

The regulations also require that SDs and MSPs have the systems and procedures necessary to transmit electronically all information and data required by Commission regulations to be reported to a swap data repository and to report electronically all information and swap transaction and pricing data required to be reported in accordance with the real-time public recording obligations set forth in Commission regulations.

- 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.**

SDs and MSPs were new categories of registrants under the Dodd-Frank Act. Accordingly, the required information was not already collected by the Commission for any other purpose. It is currently not 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 Form 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 maintain the records required by the regulations would adversely affect the Commission's ability to ensure the affected registrants' compliance with their obligations under the CEA and Commission regulations to maintain daily trading records; to maintain an audit trail that is complete and permits accurate trade reconstruction; to maintain other records of activities related to their swaps businesses and communications; and to make certain reports regarding their transactions, positions, and financial condition.

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 to this Supporting Statement. The reporting obligations contained in the regulations (the requirements to report swap transactions to swap data repositories in accordance with regulation 23.204 and to engage in real time public reporting of swap transaction and pricing data in accordance with regulation 23.205) do not result in any additional cost to SDs and MSPs beyond any costs already described and accounted for in the final part 45 regulations for swap data recordkeeping and reporting and in the final part 43 regulations governing real-time public reporting of swap transaction data.

- **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 regulations do not impose a reporting requirement 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;**

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the [CEA] or by [Commission] 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 five-year period. All such books and records shall be open to inspection by any representative of the commission or the United States 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 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.**

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 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 74768, 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 renumeration of contractors or grantees.

This question does not apply. No decision to provide any payment or gift to respondents has been 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 or 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

As delineated below, the hourly burden associated with the regulations is estimated to be 2,096 hours per SD or MSP, at an annual cost of \$209,600 per respondent. This hourly burden is not expected to vary widely among respondents. 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.

Specifically, the Commission estimates that SDs and MSPs spend approximately eight hours per trading day (2,016 hours per year) compiling and maintaining transaction records pursuant to regulation 23.201, including the daily trading records required by regulation 23.202. The Commission believes that respondents will expend an additional 63 hours per year compiling daily records of their positions, identified by product and counterparty, as required by regulation 23.201.

The Commission estimates that each SD and MSP spends 5 hours per year compiling the complaint records required by regulation 23.201. This estimate is based on the belief that the affected respondents primarily engage in principal to principal transactions, which are less likely to generate complaints than transactions conducted on an agency basis. Finally, the Commission estimates the hourly burden associated with compliance with the marketing communication recordkeeping requirement set forth in regulation 23.201 to be approximately 12 hours per year.

The Commission believes that several aspects of the regulations do not result in any additional hourly burdens upon affected respondents. For example, the required records of transactions executed on a swap execution facility or designated contract market or transactions cleared by a designated clearing organization would be the same transaction and daily trading records accounted for previously and, therefore, have not been assigned an extra hourly burden. The Commission also believes that SDs and MSPs kept and/or maintained their meeting minutes; organizational charts; the resumes of relevant managers; records of their assets, liabilities, income, and expenses; and other governance or financial records in the ordinary course of their businesses prior to the Commission promulgating the regulations .

Finally, the Commission does not believe that the requirements to report swap transactions to swap data repositories in accordance with regulation 23.204, to engage in real time public reporting of swap transaction and pricing data in accordance with regulation 23.205, and to maintain the electronic systems and procedures necessary to report transactions and data in the manner required by the regulations result in any additional hourly burdens or costs to SDs and MSPs other than those previously set forth and accounted for in the part 45 regulations for swap data recordkeeping and reporting and in the part 43 regulations governing real-time public reporting of swap transaction data.

The annualized costs per affected respondent 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 and 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 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.

Recordkeeping: Transaction Records (including Daily Trading Records).

Number of registrants: 105

Frequency of collection: daily

Estimated number of responses per registrant: 252 [252 trading days]

Estimated aggregate number of responses: 26,460 [105 registrants x 252 trading days]

Estimated annual burden per registrant: 2,016 hours [252 trading days x 8 hours per trading day]

Estimated aggregate annual hour burden: 211,680 hours [105 registrants x 252 trading days x 8 hours per trading day]

Recordkeeping: Position Records.

Number of registrants: 105

Frequency of collection: daily

Estimated number of responses per registrant: 252 [252 trading days]

Estimated aggregate number of responses: 26,460 [105 registrants x 252 trading days]

Estimated annual burden per registrant: 63 hours [252 trading days x .25 hours per record]

Estimated aggregate annual hour burden: 6,615 hours [105 registrants x 252 trading days x .25 hours per record]

Recordkeeping: Complaints.

Number of registrants: 105

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

²

Frequency of collection: as needed

Estimated number of responses per registrant: 5

Estimated aggregate number of responses: 525 [105 registrants x 5 complaints per registrant]

Estimated annual burden per registrant: 5

Estimated aggregate annual hour burden: 525 [105 registrants x 5 complaints per registrant]

Recordkeeping: Marketing Communications.

Number of registrants: 105

Frequency of collection: as needed

Estimated number of responses per registrant: 12 (monthly compilation of records)

Estimated aggregate number of responses: 1,260 [105 registrants x 12 monthly compilations]

Estimated annual burden per registrant: 12 hours [1 hour x 12 months]

Estimated aggregated annual hour burden: 1,260 [105 registrants x 12 monthly compilations]

Based upon the above, the aggregate cost for all registrants is 220,080 burden hours and \$22,008,000 [220,080 burden hours 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.

It is not anticipated that the regulations would 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 program changes or adjustments are required by the Dodd-Frank Act, which established a new regulatory scheme.

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 – Reporting, Recordkeeping and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

OMB Collection File 3038-0087

Number of Registrants: 105

Frequency of Recordkeeping: Daily or as needed (see chart below)

Start-up Cost Per Registrant: \$0

Aggregate Start-Up Cost: \$0

Estimated Average Burden Hours Per Registrant: 2,096

Estimated Aggregate Burden Hours: 220,080

Estimated Annual Cost Per Registrant: \$209,600

Estimated Aggregate Annual Cost: \$22,008,000

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

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Annual Hour Burden Per Registrant	Estimated Aggregate Hour Burden	Estimated Annual Cost Per Registrant	Estimated Aggregate Annual Cost
<u>Recordkeeping:</u> Transaction Records (including Daily Trading Records)	105	Daily	252	26,460	8	2,016 hours	211,680 hours	201,600	21,168,000
<u>Recordkeeping:</u> Position Records	105	Daily	252	26,460	.25	63 hours	6,615 hours	6,300	661,500
<u>Recordkeeping:</u> Complaints	105	As needed	5	525	1	5 hours	525 hours	500	52,500
<u>Recordkeeping:</u> Marketing Communications	105	As needed	12	1,260	1	12 hours	1,260 hours	1,200	126,000
Total			521	54,705		2,096	220,080	209,600	22,008,000