

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
“Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in
Connection with Portfolio Margining of Swaps and Security-Based Swaps”

A. JUSTIFICATION

1. Information Collection Necessity

No statute or regulation mandates the information collection. The information collection is necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptions provided by the Commission’s Order, which was issued pursuant to Section 36 of the Exchange Act.

2. Information Collection Purpose and Use

The information collection requirements are intended (1) to provide customers of broker-dealers and futures commission merchants with appropriate agreements, disclosures, and opinions to clarify key aspects of the regulatory framework that will govern their participation in a program to commingle and portfolio margin cleared credit default swap positions and (2) to ensure that appropriate levels of margin are collected.

3. Consideration Given to Information Technology

Use of any particular technology is not mandated to satisfy the information collection. Advances in information technology, such as advances in word processing and document production, may reduce the burden of producing and transmitting the contracts, disclosures, and legal opinions.

4. Duplication

Because the Order provides original, conditional exemptive relief, the Commission does not believe that any of the information collection duplicates any existing information collection. Furthermore, because respondents were not required to provide the disclosures, opinions, and other information required by the information collection prior to the Order, the Commission does not believe that any existing information was already available to satisfy the purposes of the information collection.

5. Effect on Small Entities

None of the respondents to the information collection will be small businesses or other small entities.

6. Consequences of Not Conducting Collection

Not imposing the information collection requirements would deprive customers of broker-dealers and futures commission merchants that elect to offer a program to commingle and portfolio

margin customer positions in cleared credit default swaps in accounts maintained in accordance with Section 4d(f) of the Commodities Exchange Act and the rules thereunder of disclosures and other information needed to make a determination about whether to participate in such a program. Not imposing the collection of information requirements would also deprive the Commission of information needed to ensure that appropriate margins are collected.

Reducing the information available to customers may discourage customer participation in portfolio margining programs and/or lead to confusion about the parameters of such programs and the protections afforded to customers in such programs. Also, if the Commission is unable to obtain the necessary information from a broker-dealer/future commission merchant, the Commission may not be able to approve of the broker-dealer/future commission merchant's margin methodology and ensure that the appropriate margin has been collected.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

The collection of information does not provide any payment or gift to respondents.

10. Confidentiality

The information collection provides that to the extent the Commission receives confidential information, the Commission is committed to protecting the confidentiality of such information, subject to the provisions of applicable law. Cited as examples are Exchange Act Section 24, 15 U.S.C. 78x (governing the public availability of information obtained by the Commission) and 5 U.S.C. 552 et seq. (Freedom of Information Act—"FOIA"). FOIA Exemption 4 provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). FOIA Exemption 8 provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. 552(b)(8).

11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

12. Information Collection Burden

The Commission estimates that 45 firms may seek to avail themselves of the conditional exemptive relief provided by the Order and therefore would be subject to the information collection. The Commission bases this estimate on the total number of entities that are dually registered as broker-dealers and futures commission merchants. Based on information that the Commission receives on a monthly basis, as well as current projections regarding the estimated increase in the number of customers per respondent,¹ the Commission anticipates an average number of credit default swap customers to be 120 per respondent, 109 of which would be non-affiliates and 11 of which would be affiliates.

The Commission estimates that the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order will impose an initial, one-time burden of 2,180 hours per respondent. The Commission estimates that each respondent will have, on average, 109 non-affiliate credit default swap customers and that for each such customer, a respondent will spend approximately 20 hours developing a subordination agreement. This burden is a third-party disclosure burden.

The Commission estimates that the burden associated with entering into non-conforming subordination agreements with affiliate cleared credit default swap customers under paragraph IV(b)(2)(ii) of the Order will impose an initial, one-time burden of 220 hours per respondent. The Commission estimates that each respondent will have, on average, 11 affiliate credit default swap customers and that for each such customer, a respondent will spend approximately 20 hours developing a subordination agreement. This burden is a third-party disclosure burden.

The Commission estimates that the burden associated with obtaining opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order will impose an initial, one-time burden of 22 hours per respondent. The Commission estimates that each respondent will have, on average, 11 affiliate cleared credit default swap customers and that for each such customer, a respondent will spend approximately 2 hours developing and reviewing the required opinion. This burden is a third-party disclosure burden.

The Commission estimates that the burden associated with seeking the Commission's approval of margin methodologies under paragraph IV(b)(3) of the Order will impose an initial, one-time burden of 1,000 hours per respondent. This burden is a reporting burden.

The Commission estimates that the burden associated with disclosing information to customers under paragraph IV(b)(6) of the Order will impose an initial, one-time burden of 8 hours per respondent. This burden is a third-party disclosure burden.

¹ The Commission notes that these estimates are based on current data and the current regulatory framework.

13. Costs to Respondents²

The Commission estimates that each respondent will incur a one-time cost of \$8,000 in outside legal counsel expenses, at a cost of \$400 per hour, in connection with obtaining opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order.

14. Costs to Federal Government

The information collection does not impose any cost to the Federal Government.

15. Changes in Burden

The Commission has made the following changes to its estimates of burdens and costs (Items 12 and 13).

First, the Commission reduced the total number of respondents from 57 to 45. This change was made based on updated data regarding the number of entities that are dually registered as broker-dealers and futures commission merchants.

Second, the Commission reduced the number of non-affiliate credit default swap customers from 1,000 to 109. This change was made based on data that the Commission receives on a monthly basis, as well as current projections regarding the estimated increase in the number of customers per respondent. As a result of that change, the Commission reduced its estimate of the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order from 20,000 hours per respondent to 2,180 hours per respondent.

Third, the Commission reduced its estimate that each respondent will incur a one-time cost of \$40,000 in outside legal counsel expenses in connection with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order. Based on staff experience in connection with the Order, the Commission anticipates that respondents will incur such costs in-house. As stated, the Commission estimates that the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order will impose an initial, one-time burden of 2,180 hours per respondent.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval omit the OMB expiration date.

² For purposes of this section, the cost to respondents is a one-time cost, but has been annualized.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.