

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

Registration of Swap Dealers and Major Swap Participants

OMB CONTROL NUMBER 3038-0072

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, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things, providing for the registration and comprehensive regulation of swap dealers (“SDs”) and major swap participants (“MSPs” and, together with SDs, “Swaps Entities”). Section 731(b) of the Dodd-Frank Act added CEA Sections 4s(a) and 4s(b), which require Swaps Entities to register with the Commodity Futures Trading Commission (“Commission”). Section 731(d) of the Dodd-Frank Act requires the Commission to adopt rules for registered swaps entities, and CEA Section 4s(b)(2) states that a Swaps Entity registration application shall be made in the form and manner prescribed by the Commission. The Commission therefore adopted regulations (“Swaps Entity Registration Regulations”) regarding the process for registering Swaps Entities with the Commission.¹

The Commission adopted a proposal (“Proposed Rule”) that provides for the cross-border application of the SD and MSP registration thresholds and the Commission’s external business conduct standards.² The Commission is proposing to amend Parts 1 and 23 of the Commission’s regulations to define key terms for purposes of applying the CEA’s swap provisions to cross-border transactions and to address the cross-border application of the registration thresholds and external business conduct standards for swap dealers and major swap participants, including the extent to which they would apply to swap transactions that are arranged, negotiated, or executed using personnel located in the United States. The Commission is proposing to define the key terms of “U.S. person” and “Foreign Consolidated Subsidiary” for broad cross-border application.³ As further described in the Proposed Rule, whether a potential SD would include a

¹ The Commission’s existing registration process for futures, commodity options and retail forex intermediaries, as well as for floor traders and floor brokers, is extensively set forth in part 3 of the regulations under the CEA.

² See Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants.

³ Nearly identical terms were adopted in the context of cross-border margin requirements. See Cross-Border Margin Rule, 81 FR 34818; 17 CFR 23.160(a).

particular swap in its de minimis calculation would depend on whether the potential SD is classified as a U.S. person or a non-U.S. person whose obligations under the relevant swap are guaranteed by a U.S. person (“U.S. Guaranteed Entity”); a Foreign Consolidated Subsidiary; or a non-U.S. person that is neither a Foreign Consolidated Subsidiary nor a U.S. Guaranteed Entity. The collections required by the Proposed Rule are necessary to implement the Dodd-Frank Act’s registration provisions and the cross-border swap provisions that expressly apply to activities that have a direct and significant connection with activities in, or effect on, U.S. commerce or that contravene Commission rules or regulations as necessary or appropriate to prevent evasion.

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.

The information received pursuant to the Swaps Entity Registration Regulations would be analyzed by Commission staff and would form a basis for recommendations to the Commission concerning approval of registration, compliance with the CEA’s requirements, or whether the Commission should take any action regarding lack of compliance with the CEA.

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 is required to be submitted 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.

SDs and MSPs are participants in the swaps market that are required to register with the Commission; as such, the required information is not available from any other source. Section 731(c) of the Dodd-Frank Act requires registration of SDs and MSPs regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission. If an SD or MSP is already registered with the Commission, or if an applicant seeks to register in more than one capacity, it is just a matter of checking off the box on the screen of the requisite electronic, online form.⁴

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.

This collection of information will not have a significant impact on a substantial number of small entities. The required information does not involve any small businesses or other small entities.

⁴ These forms are available on the website of the National Futures Association (“NFA”), a registered futures association to whom the Commission previously has delegated processing responsibility for existing categories of registrants under the CEA. The Commission has delegated to NFA the authority to process registration forms filed by SDs and MSPs.

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.

If the information required under this collection of information were not collected, enforcement of Commission rules would be adversely affected.

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;**

The proposed regulations require respondents to report information to the Commission annually and occasionally. The proposed regulations do not require respondents to report information to the Commission more often than quarterly.

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

In order for the Commission to adequately assess whether a Swaps Entity may be registered, a Swaps Entity might be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation.

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

Swaps Entities are required to submit only single copies of applications.

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

The Swaps Entity Registration Regulations do not specifically mandate retention of any registration records. However, 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;**

No statistical surveys are involved.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

The requirements do not involve 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**

The requirements do not involve a pledge of confidentiality regarding the collection of data.

- **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 procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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 Federal Register release for the Proposed Rule, the Commission seeks public comment on any aspect of the proposed collection of information.

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

This question does not apply.

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 an applicant's or registrant's data.

These are set forth in the Commission's regulations at parts 145 and 147 of title 17 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. None of the required information is sensitive, 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 Commission estimates that if the Proposed Rule is adopted, 14 unregistered non-U.S. persons may be classified as "Foreign Consolidated Subsidiaries" and required to register as new SDs because their swap dealing transactions would be in excess of the SD de minimis threshold. The Commission therefore estimates that an aggregate of 139 respondents (including the estimated 14 additional registrants) will file a total of 856 responses for the existing registration requirements for an aggregate of 699.4 burden hours. The estimated average number of hours per response is 1.0 hour per response for the Form 7-R; 0.8 hours per response for the Form 8-R; 0.1 hours per response for the Form 7-W; 0.2 hours per response for

the Form 8-T; and 0.1 hours per response for the Form 3-R.⁵ The cost of the hourly burden is estimated to be \$160 per hour.⁶

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.**

⁵ As noted in Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2622 (Jan. 19, 2012), the Commission estimates that there will be a de minimis burden for withdrawals from registration by SDs or MSPs and their respective principals and for reported corrections.

⁶ The Commission's estimates concerning wage rates are based on 2013 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The Commission is using a figure of \$160 per hour, which is derived from a weighted average of salaries 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, adjusted to account for the average rate of inflation in through April 2016. This figure was then multiplied by 1.33 to account for benefits and further by 1.5 to account for overhead and administrative expenses, and rounded to the nearest ten dollars. The Commission anticipates that compliance with the provisions would require the work of an information technology professional; a compliance manager; an accounting professional; and an associate general counsel. Thus, the wage rate is a weighted national average of salary for professionals with the following titles (and their relative weight); "programmer (average of senior and non-senior)" (15 percent weight), "senior accountant" (15 percent) "compliance manager" (30 percent), and "assistant/associate general counsel" (40 percent).

Total costs are included in the answer to question 12. No new start-up and maintenance costs are involved.

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.

There are no new annualized costs to the Commission that will result in connection with the adoption of the registration process for SDs and MSPs.⁷

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

The Proposed Rule provides for the cross-border application of the SD and MSP registration thresholds and the Commission's external business conduct standards. The Commission estimates that if the Proposed Rule is adopted, 14 unregistered non-U.S. persons may be classified as "Foreign Consolidated Subsidiaries" and required to register as new SDs because their swap dealing transactions would be in excess of the SD de minimis threshold.

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.

⁷ This is because, as is stated in note 4 above, the Commission has delegated to NFA the authority to process registration forms filed by SDs and MSPs. Commission staff periodically conducts reviews of NFA's registration processing program.

Attachment A
Section 731 of the Dodd-Frank Act – Rules Pertaining to Registration Requirements
Applicable to
Swap Dealers and Major Swap Participants

OMB Collection File 3038-0072

Currently, the existing estimates are based upon 125 Respondents/Affected Entities and the burden hour estimates for the registration forms.

The burden associated with this information collection is currently estimated to be 629 hours, which is based on: (1) application for registration by SDs and MSPs and submission of required information on behalf of their respective principals; (2) initially, no withdrawals from registration by SDs and MSPs and a relatively small decrease in the number of their respective principals; and (3) initially, no reported corrections. The respondent burden for this collection is estimated to average 1.0 hours per response for the Form 7-R; 0.8 hours per response for the Form 8-R; 0.1 hours per response for the Form 7-W; 0.2 hours per response for the Form 8-T; and 0.1 hours per response for the Form 3-R.⁸ These estimates include the time needed: to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; and to transmit or otherwise disclose the information. In the Proposed Rule, the Commission estimates that 14 unregistered non-U.S. persons may be classified as “Foreign Consolidated Subsidiaries” and required to register as new SDs because their swap dealing transactions are in excess of the SD de minimis threshold.⁹ The new aggregate estimate for burden hours is calculated as follows:

Form 7-R

Respondents/Affected Entities: 139

Estimated number of responses: 139

Estimated total annual burden on respondents: 1.0 hours

Frequency of collection: On occasion and annually

Burden statement: 139 respondents x 1.0 hours = 139 Burden Hours

Form 8-R

Respondents/Affected Entities: 5 principals per each of 139 SDs and MSPs

Estimated number of responses: 695

Estimated total annual burden on respondents: 0.8 hours

Frequency of collection: On occasion

Burden statement: 695 respondents x 0.8 hours = 556 Burden Hours

Form 8-T

Respondents/Affected Entities: 1 principal per each of 22 SDs and MSPs

Estimated number of responses: 22

Estimated total annual burden on respondents: 0.2 hours

Frequency of collection: On occasion

⁸ See *supra*, note 5.

⁹ The Commission has not included any discussion of registration costs for MSPs because it believes that few (if any) market participants will be required to register as an MSP under the Proposed Rule.

Burden statement: 22 respondents x 0.2 hours = 4.4 Burden Hours

As detailed in the table below, Commission staff estimates that the estimated additional 14 respondents that may be required to register as new SDs under the Proposed Rule could expend in the aggregate 70.4 hours annually to comply with the proposed regulations. As explained in note 6, the cost to the public of the hour burdens is estimated to be \$160 per hour.

Reporting Burden for Proposed Rule

1. Forms	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Respondent	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
Form 7-R	14	1	1	1	\$160	\$160	14	14	\$2240
Form 8-R	14	5	.8	4	\$160	\$640	70	56	\$8960
Form 8-T	2 ¹⁰	1	.2	.2	\$160	\$32	2	.4	\$64

¹⁰ The Commission estimates that, based on the additional 14 respondents that the Proposed Rule would add, there would be two respondents and one response per respondent for Form 8-T.