

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS
Proposed Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters

OMB CONTROL NUMBER 3038-0086

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.

Title VII of the Dodd-Frank Act¹ amended the Commodity Exchange Act (“CEA” or the “Act”)² to establish a comprehensive new regulatory framework for swaps including, in new CEA § 21, the registration and regulation of Swap Data Repositories (“SDRs”).³ CEA § 21 imposes on SDRs, among other duties and responsibilities, the duty to maintain the privacy of all swap transaction information received from a swap dealer, counterparty, or any other registered entity.⁴ Additionally, CEA § 21(c)(7) directs SDRs to make swap data available “on a confidential basis pursuant to section 8 [of the CEA]”⁵ to certain enumerated domestic authorities and any other person the Commission determines to be appropriate, which may include certain types of foreign authorities.⁶ As originally enacted, CEA §§ 21(d)(1) and (2) mandated that, prior to receipt of any requested data or information from an SDR, domestic and foreign authorities described in CEA § 21(c)(7) agree in writing to abide by the confidentiality requirements described in CEA § 8 and, separately, to indemnify the SDR and the Commission for “any expenses arising from litigation relating to the information provided under section 8.”⁷

The Fixing America’s Surface Transportation Act of 2015 (“FAST Act”), enacted in

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1 et seq.

³ See Dodd-Frank Act § 728 (adding new CEA section 21, 7 U.S.C. § 24(a), to establish a registration requirement and regulatory regime for SDRs).

⁴ 7 U.S.C. § 24a(c)(6).

⁵ CEA section 8 describes circumstances under which public disclosure of information in the Commission’s possession is permitted and prohibited. 7 U.S.C. § 12(e).

⁶ See 7 U.S.C. § 24a(c)(7). See also Commission, Final Rulemaking: Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, Jan. 13, 2012 (“Data Final Rules”). The Data Final Rules set forth, among others, regulations governing SDR data collection and reporting responsibilities under part 45 of the Commission’s regulations.

⁷ 7 U.S.C. § 24a(d).

December 2015, amended CEA §§ 21(c)(7) and 21(d), including by repealing the indemnification requirement formerly set forth in § 21(d).⁸ Congress's repeal of the indemnification requirement gave rise to the amendments proposed in this release. The FAST Act modified CEA § 21(c)(7) by (1) adding a new category of "other foreign authorities" to the non-exclusive list of entities contained in CEA § 21(c)(7) that the Commission may deem to be appropriate to receive access to SDR swap data and (2) changing the reference in CEA § 21(c)(7) to "swap data" rather than "all data" in describing the information that SDRs must make available other regulators.

On January 25, 2017, the Commission published a Notice of Proposed Rulemaking to address these modifications and certain other matters. To the extent the proposed modifications to part 49 introduce new information collections that were not previously incorporated into Information Collection 3038-0086, the Commission is proposing to revise Information Collection 3038-0086 to account for the new information collections. Many of the information collections discussed in existing Information Collection 3038-0086 are not implicated or modified by the Commission's proposed revisions to part 49 in this release. The Commission, therefore, is not proposing to revise the estimated burdens associated with those information collections. New or revised information collections contained in these proposed revisions to part 49 will affect SDRs as well as entities that request access to SDR swap data pursuant to these provisions. The following proposed regulations require collections of information:

- proposed § 49.18(a) would require that each entity seeking access to SDR swap data must execute a confidentiality arrangement with the Commission prior to receiving access;
- proposed § 49.17(h) requires those entities that are not enumerated in § 49.17(b) (1) to submit an application to receive a determination from the Commission that the entity is appropriate (such entities are referred to, respectively, as ADRs (for appropriate domestic regulators) and AFRs (for appropriate foreign regulators)) to receive access to SDR swap data;
- proposed § 49.17(d)(i) requires SDRs to maintain records of all information related to the initial and all subsequent requests for data from each requesting entity; and
- proposed § 49.17(d)(iii) requires SDRs to determine that the swap data to which an ADR or AFR seeks access is within the then-current scope of such ADR's or AFR's jurisdiction, as set forth in a description of jurisdiction appended to the confidentiality arrangement required by proposed § 49.18(a), prior to providing access to swap data maintained by the SDR.

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.

⁸ See Pub. L. No. 114-94, section 86001(b)(2).

The information collections contained in the Commission’s proposed rulemaking would allow for swap data access for regulatory purposes to be granted to domestic and foreign regulators including the: Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency; Federal Deposit Insurance Corporation; Farm Credit Administration and Federal Housing Finance Agency; Financial Stability Oversight Council; Securities and Exchange Commission; Department of Justice; and any other person the Commission determines to be appropriate, including foreign financial supervisors, foreign central banks, foreign ministries and other foreign authorities. Swap data access by other regulators has the potential to provide other authorities with more complete information with which to monitor risk exposures and should be expected to promote global market stability.

The Commission has not received information from the current collection because, to date, no other regulators have taken advantage of the existing swap data access provisions, so the reporting and recordkeeping provisions related to the collection were not triggered.

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.

All the information collection requirements are expected to involve the use of electronic collection protocols, particularly given the large amount of data available to be accessed. All required submissions may be submitted electronically. The Commission is permitting SDRs, ADRs and AFRs a wide amount of discretion in determining how to provide swap data access.

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 proposed regulations would modify the existing requirements for SDRs providing access to swap data to other regulators. These modifications are, in part, necessary as the result of changes to the CEA made by the FAST Act. The modifications are necessary to provide other authorities with information to assist with the oversight of the global swaps market and market participants. The swap data in question is unique so there is no “similar information” available. In any case, seeking the swap data in question is voluntary. To the extent the Commission is requiring collections, it is from the entity best placed to provide the necessary information. For example, ADRs and AFRs themselves are best places to know of a change to their jurisdiction and, therefore, are best places to inform the Commission and SDRs of that change.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-1), describe the methods used to minimize burden.

The rules proposed herein will have a direct effect on the operations of SDRs and certain domestic and foreign regulators seeking access to swap data reported to, and maintained, by SDRs. The Commission expects that no SDRs, AFRs and ADRs are small entities. The proposal is not applicable to, and should not have a significant economic impact on, a substantial number of 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.

The proposed requirements contained in the proposed rulemaking are intended to balance the goal of effective and consistent global regulation of swaps with the mandate of CEA sections 21(c)(7) and (d) that swap data be made available to a limited universe of regulators on a confidential basis pursuant to CEA section 8. The modifications of the existing regulations are necessary to provide the Commission and other authorities with more complete information with which to monitor risk exposures and should be expected to promote global market stability through enhanced regulatory transparency. In several cases, the proposed requirements call for only a single collection, so reducing the frequency of the collection is impossible without abandoning the benefits of the collection entirely.

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 rule modifications do not specifically require respondents to report information to the agency more often than quarterly. However, proposed § 49.17(d)(4)(i) would require each SDR to notify the Commission promptly after receiving an initial request from an ADR or AFR to gain access to swap data maintained by such SDR and promptly after receiving any request that does not comport with the scope of the ADR's or AFR's jurisdiction. Also, proposed § 49.17(d)(4)(iii) would require each ADR and AFR that has executed a confidentiality arrangement with the Commission pursuant to § 49.18(a) and provided such confidentiality arrangement to one or more SDRs to notify the Commission and each such SDR of any change to such ADR's or AFR's scope of jurisdiction. Proposed § 49.18(c) would require an SDR to immediately report to the Commission any known failure to fulfill the terms of a confidentiality arrangement that the SDR receives pursuant to proposed § 49.18(a).

Although each of these collections (except for the collection prompted by an initial request for swap data) theoretically could occur more frequently than quarterly, the Commission does not believe that is likely.

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

The collection (in proposed § 49.17(d)(4)(i)) would require each SDR to notify the Commission “promptly” after receiving an initial request from an ADR or AFR to gain access to swap data maintained by such SDR and promptly after receiving any request that does not comport with the scope of the ADR’s or AFR’s jurisdiction, in each case electronically in a format specified by the Secretary of the Commission (pursuant to proposed § 49.17(d)(4)(ii)). In the case of notice of an initial request, the Commission desires to be informed of each ADR and AFR requesting SDR access so the Commission can check that each requesting ADR and AFR is the subject of a determination order granting such access is permitted to access such data and so the Commission is generally aware of which ADRs and AFRs have access to SDR swap data. In the case of notice of a request that does not comport with the scope of the ADR’s or AFR’s jurisdiction, the Commission wishes to be made aware of such requests as soon as practicable so the Commission can consider appropriate remedial action to cease the improper dissemination of SDR swap data and consider appropriate punitive and remedial measures.

Proposed § 49.17(d)(4)(iii) would require an ADR or AFR that has executed a confidentiality arrangement with the Commission pursuant to proposed § 49.18(a) and provided such confidentiality arrangement to one or more SDRs to notify the Commission and each such SDR of any change to such ADR’s or AFR’s scope of jurisdiction as described in such confidentiality arrangement. While the collection does not specifically require that this notice occur within 30 days or be in writing, the Commission would expect both. The Commission wants prompt notice so that it may quickly consider directing an SDR to suspend, limit, or revoke access to swap data maintained by such SDR based on any such change in the scope of an ADR’s or AFR’s jurisdiction in order to prevent or cease the improper dissemination of SDR swap data.

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

Not applicable: the collection does not require this.

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

While proposed § 49.17(d)(4)(i) contains a recordkeeping requirement that would extend beyond three years, that proposed requirement was already contained implicitly in § 45.2(f), which requires SDRs to keep full, complete and systematic records of all activities relating to their business as SDRs.

- 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;

Not applicable: the collection is not a statistical survey.

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

Not applicable: the collection does not require the use of a 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

Proposed Appendix B to Part 49 of the CFTC's regulations contains a form of confidentiality agreement pursuant to which ADRs and AFRs would undertake to maintain the confidentiality of SDR swap data they receive. The form of confidentiality agreement contains a number of confidentiality safeguards with which ADRs and AFRs signing the confidentiality agreement undertake to comply. Also, proposed § 49.17(h)(2) requires each applicant for access to SDR swap data to provide sufficient detail in its application to permit the Commission to analyze whether, among other things, the applicant employs appropriate confidentiality safeguards to ensure that any swap data such applicant receives from an SDR will not, except as allowed for in the form of confidentiality arrangement set forth in proposed Appendix B to Part 49 of the CFTC's regulations, be disclosed. While the collection would include some conditions to other agencies getting access to SDR swap data, such as—(1) having to demonstrate that the SDR swap data they seek are within the scope of their jurisdiction, (2) requiring agencies not enumerated by Congress in the Commodity Exchange Act to apply for determinations that they are appropriate recipients of SDR swap data, and (3) a prohibition on recipients of SDR swap data sharing such swap data with other parties, subject to narrow exceptions—such safeguards are necessary to implement the Congressional directive in CEA §§ 21(c)(7) and (d) that only those non-enumerated regulators that the CFTC determines are appropriate should have access to SDR swap data and only if such access is pursuant to the confidentiality safeguards of CEA § 8.

- 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 collection does not require submission of proprietary trade secrets, or other confidential information; the CEA requires market participants to report their swap data to SDRs and requires SDRs to permit ADRs and AFRs to access such data, but pursuant to the confidentiality safeguards of CEA § 8. The Commission is proposing to implement the safeguards discussed throughout the responses to Question 7 to protect the information's confidentiality.

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 C.F.R. 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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.

The Commission published a notice requesting public comment on its proposed rulemaking in the Federal Register (82 FR 8369) on January 25, 2017.

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

No payment or gift was provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

No such assurance of confidentiality was provided. On the contrary, the NPRM advises potential respondents that:

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.

...

All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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.

The regulations covered by the collections do not require the giving of private information of a sensitive nature, 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.

The proposed modifications to part 49 set out in this release are intended to provide a process by which ADRs and AFRs may obtain access to SDR swap data. The information collections associated with this process are intended to ensure that SDR swap data is only accessed by appropriate entities and that the confidentiality of any accessed SDR swap data is adequately protected. The ultimate goal of this process is to provide other authorities with information to assist with the oversight of the global swaps market and market participants.

ADR/AFRs. Pursuant to proposed § 49.18(a), every requesting entity seeking access to SDR swap data would be required to execute a confidentiality arrangement with the Commission prior to receiving access. This requirement applies to both those entities that are specifically enumerated as appropriate in current § 49.17(b)(1) (“Enumerated ADRs”) and those entities that

require a determination from the Commission that they are appropriate entities to receive access to SDR swap data, regardless of whether the requesting entity is a domestic or foreign entity.

In addition to executing a confidentiality arrangement, requesting entities that are not Enumerated ADRs will be required to seek a determination order from the Commission to have access to SDR swap data. Such determination orders will describe SDR swap data that is appropriate for the entity to access, based on the requesting entity's scope of jurisdiction. For Enumerated ADRs, the Commission is proposing to require that the confidentiality arrangement describe the requesting entity's scope of jurisdiction. The Commission believes the use of the form of confidentiality arrangement set out in Appendix B to part 49 will provide an efficient means to satisfy the confidentiality arrangement requirements of § 49.18(a).

For PRA purposes, the Commission believes that it is reasonable to assume that 300 total entities will seek access to SDR swap data. This estimate is based on the Commission's experience in receiving data requests from other regulators and its experience in coordinating and cooperating with other regulators.⁹ For PRA purposes, the Commission assumes there are four SDRs, which is the number of SDRs that are provisionally registered with the Commission. As the confidentiality arrangement will be between the ADR or AFR and the Commission and delivered to the SDR, AFRs and ADRs need not execute a separate confidentiality arrangement for each SDR. Accordingly, the Commission estimates, for PRA purposes, that the total number of confidentiality arrangements that will be executed under the proposed rules is 300. Given that the Commission will have published a form of confidentiality arrangement as an appendix to part 49, the Commission estimates that the review and execution of each confidentiality arrangement by an ADR or AFR will take approximately 40 hours, for a total burden of 12,000 hours.¹⁰

An entity that seeks access to SDR swap data must be considered appropriate by the Commission prior to that entity receiving access to SDR swap data. For Enumerated ADRs, there is no burden associated with seeking to be deemed appropriate by the Commission as they are already enumerated as such in current § 49.17(b)(1). Those entities that are not Enumerated ADRs will be required to receive a Commission Determination Order prior to receiving access to SDR swap data. The process for obtaining such a Determination Order is set out in general terms in proposed § 49.17(h) and requires the requesting entity to prepare and submit an application to the Commission. The preparation and submission of this application constitutes an information collection under the PRA.

⁹ The Commission estimates that up to approximately 30 authorities in the United States may seek to access swap data from SDRs. In the context of potential AFRs, the Commission believes that most requests will come from authorities in G20 countries, each of which will have no more, and likely fewer, than 30 authorities that may request swap data from SDRs. In addition, certain authorities from outside the G20 also may request swap data from SDRs. Accounting for all of these entities, the Commission estimates that there likely will be a total of no more than 300 relevant domestic and foreign authorities that may request swap data from SDRs.

¹⁰ For this activity, the Commission uses the SIFMA Report on Management and Professional Earnings in the Securities Industry to estimate costs. The SIFMA Report for 2013, states the mean salary for a compliance attorney is \$100,840 with an average bonus of \$26,666. This gives \$127,506 in average total compensation for a compliance attorney. This number is divided by 2,000 annual working hours and multiplied by 5.35 to account for overhead to get approximately \$341 per hour.

As discussed above, the Commission believes that for PRA purposes it is reasonable to assume that 300 domestic and foreign entities will seek access to SDR swap data. Very few of these entities are specifically enumerated in § 49.17(b)(1). The Commission estimates, for PRA purposes, that each such requesting entity would expend 100 hours in connection with filing an application to receive an appropriateness determination, for a total initial burden of no more than 30,000 hours, calculated as the product of 300 domestic and foreign entities seeking access to SDR swap data and 100 hours per application).¹¹ This estimate considers the relevant information that would be required to be provided in such an application, including information regarding the entity's scope of jurisdiction, mutual assistance provided to the Commission, and the existence of cooperation related to an MOU or similar information sharing arrangement with the Commission, as well as any other information relevant for the Commission's determination.

Swap Data Repositories. As discussed throughout the proposed rule, SDRs are required to facilitate access to SDR swap data by requesting entities, provided certain conditions are met. This requirement may implicate PRA collections and burdens, some of which are already addressed in the existing OMB Control Number 3038-0086, and some of which constitute new collections, as discussed below. Currently, the burden on SDRs of making data available to ADRs and AFRs is accounted for in the existing OMB Control Number 3038-0086, as this is an existing obligation under existing § 49.17(d). However, the proposed rules set out in this release clarify and modify the requirements imposed on SDRs in providing access to SDR swap data to ADRs and AFRs. Consequently the Commission is revising Information Collection 3038-0086 to account for these modifications.

The Commission expects to limit a requesting entity's access to SDR swap data based on the entity's scope of jurisdiction. In connection with this limitation, the Commission expects SDRs to incur burdens and costs associated with setting up access to SDR swap data that is consistent with an ADR or AFR's scope of jurisdiction. The Commission expects that each confidentiality arrangement will identify, either directly or through the attached Determination Order, the scope of access that is appropriate for a given requesting entity. The Commission expects SDRs to use these limitations to program their systems to reflect the scope of the ADR or AFR's access to SDR swap data. These limits set out in the confidentiality arrangement are expected to reduce the burdens on SDRs of assessing whether a request satisfies the relevant conditions, particularly with regard to whether SDR swap data relates to persons or activities within the requesting entity's scope of jurisdiction. The Commission estimates that the burden on an SDR associated with setting up access restrictions to match a requesting entity's scope of jurisdiction will include 20 hours of programmer analyst time, five hours of senior programming time, and one hour of attorney time, for a total of 26 hours. Consequently, for PRA purposes, the Commission estimates that each SDR would incur a total burden of 7,800 hours (i.e., the product of 300 entities and 26 hours of time) associated with setting up access for each ADR or AFR.¹²

¹¹ The wage rate used here, as well as for other requirements, unless otherwise stated, is the estimated wage rate used in the prior renewal of Information Collection 3038-0086. This rate is a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, and a Programmer (Senior) as published in the 2013 SIFMA Report and dividing that figure by 2,000 annual working hours to arrive at the hourly rate of \$59.11.

SDRs would also be required to provide electronic notice to the Commission of the first request for data from a particular requesting entity and promptly after receiving any request that does not comport with the scope of the ADR's or AFR's jurisdiction. In addition to notifying the Commission of the foregoing, the Commission is proposing, in § 49.17(d)(4)(i), to require SDRs to maintain records of all information related to the initial and all subsequent requests for data from the requesting entity. These records shall include, at a minimum, the identity of the requestor or person accessing the data, the date, time and substance of the request or access, and copies of all data reports or other aggregation of data provided in connection with the request or access. The SDR shall maintain this information for a period of no less than five years after the date of such request and shall provide this information to the Commission upon request.

Currently, OMB Control Number 3038-0086 estimates burdens associated with various registration, reporting, recordkeeping, and disclosure requirements to which SDRs are subject. The proposed recordkeeping requirements relating to requesting entities' data requests constitute an information collection for PRA purposes and require the Commission to revise the recordkeeping burden estimates contained in OMB Control Number 3038-0086. The reporting and recordkeeping requirements proposed in this release may potentially impact each SDR.

SDRs already have the ability to communicate electronically with the Commission and are subject to significant recordkeeping requirements pursuant to §§ 45.2(f) and 49.12. Therefore, the proposed requirements should not result in SDRs having to incur initial costs to implement systems to properly notify the Commission when a requesting entity submits a data request for the first time that are in excess of what is already accounted for in OMB Control Number 3038-0086. The Commission estimates that initially each SDR may incur a burden of 360 hours associated with these proposed recordkeeping requirements, for a total of 1,440 hours (i.e., the product of four SDRs and 360 hours). Additionally, the Commission estimates that each SDR would incur an annual burden of 280 hours associated with the recordkeeping requirements, for a total of 1,120 hours annually (i.e., the product of four SDRs and 280 hours).

Finally, the existing Information Collection 3038-0086 accounts for the costs to SDRs of executing a "Confidentiality and Indemnification Agreement" with each requesting ADR and AFR. Under the Commission's proposal, the SDR is no longer required to execute such an agreement with the ADRs or AFRs. The proposed confidentiality arrangement shall be between the requesting ADR or AFR and the Commission. Accordingly, the total burden to SDRs, as currently reflected in Information Collection 3038-0086, is reduced by the cost to execute such agreements, which the Commission estimates to be 100 hours per agreement for each SDR, for a total reduction of 120,000 burden hours (i.e., the product of four SDRs, 100 hours, and 300 entities).

¹² The hourly wage rate used to estimate the costs associated with these requirements is \$ 296, which is a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 2000-hour work-year and multiplied by 5.35 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): "programmer (senior)" (10% weight); "programmer" (30%); "compliance advisor (intermediate)" (20%); "compliance attorney" (30%), and "assistant/associate general counsel" (10%).

This collection of information also modifies the existing collection by reducing the estimated number of SDRs from six to four, to more accurately reflect the current state of the market. This collection does not otherwise modify the burden estimates, including those contained in the registration and disclosure estimates, set forth in the Information Collection 3038-0086 renewal dated April 2, 2015.

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.

As discussed in response to Question 12, this proposed rule is estimated to decrease the annual cost burden to respondents by an amount of \$12,602,391, bringing the total estimated aggregated annual cost burden for Information Collection 3038-0086 to \$68,375,979.

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 will have costs relating to the need of Commission staff to review and analyze the collected documents and information, as well as costs associated with issuing determination orders under the proposed rule.

With respect to Commission staff analyzing and reviewing the collected documents and information, and with respect to the costs associated with issuing determination orders, existing staff may be used to perform these functions. However, Commission staff estimates that potentially three employees may be dedicated full-time to these functions. The estimated annual cost to the Commission per new hire is \$120,829.¹³ Therefore, the total annual aggregate staff cost to the Commission is \$362,487.

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

On April 2, 2015, the Commission submitted a renewal of collection 3038-0086, which included adjustments to burden hours to account for market changes since the initial finalization of part 49. The present submission and Supporting Statement uses that submission as a baseline for changes and adjustments to burden hours and costs.

The present submission includes adjustments to burden hours to account for new obligations on ADRs and AFRs seeking access to SDR swap data, as well as new obligations on SDRs. Some of the changes contained in the proposal are a result of the implementation of the FAST Act, which removed the statutory requirement that an ADR or AFR indemnify the Commission and SDR for all expenses arising from litigation relating to the information provided under section 8.

Other proposed changes to the existing part 49 rules modify the process by which entities are determined to be appropriate to receive access to SDR swap data, as well as require ADRs and AFRs to execute a confidentiality arrangement with the Commission prior to receiving access to SDR swap data.

Additionally, the proposed changes would require SDRs to incur costs to ensure that swap data provided to ADRs or AFRs is within the scope of the requesting entity's jurisdiction. SDRs may also incur increased costs associated with their recordkeeping requirements. Finally, the proposed changes would reduce the burden to SDRs associated with executing a confidentiality arrangement with ADRs and AFRs, as the Commission, under the proposal, would be party to the arrangement rather than the individual SDRs.

¹³ This figure is a composite of the salaries for economists (Grade 11-13) and attorneys (Grade 11-14) in the Commission's Division of Market Oversight. In obtaining the composite, Commission staff used the CFTC 2015 Washington Pay Chart (with adjusted locality pay). This figure does not include employee benefits.

This collection of information also modifies the existing collection by reducing the estimated number of SDRs from six to four, to more accurately reflect the current state of the market.

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.

The Commission doesn't plan to publish the results of the collection of information for statistical use.

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.

The Commission isn't seeking approval to not display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

There are no exceptions to the certification statement in Item 19.

Attachment A

OMB Control Number 3038-0086

Reporting Burden

Prior Est'd # of Covered Entities	Prior Est'd Total Annual Burden Hours per respondent	Prior Est'd Total Annual Burden Hrs. per fiscal year	Prior Estimated Annual Cost per Respondent For Hr. Burden (\$)	Updated Est'd # of Covered Entities	Updated Est'd Total Annual Burden Hours per respondent	Updated Est'd Total Annual Burden Hrs. per fiscal year	Updated Estimated Annual Cost per Respondent For Hr. Burden (\$)
6 (SDRs)	Initially: 40,725 Ongoing: 15,325	Initially: 244,350 Ongoing: 91,950	Initially: \$2,407,254.75 Ongoing: \$905,860.75	4 (SDRs)	Initially: 18,525 Ongoing: 15,325	Initially: 74,100 Ongoing: 61,300	Initially: \$2,942,755 Ongoing: \$905,861
				300 (ADRs/AFRs)	Initially: 140 Ongoing:	Initially: 42,000 Ongoing:	Initially: \$41,440 Ongoing:

Prior Estimated Total Annual Burden Hours: 244,350 initial annual burden hours; 91,950 ongoing annual burden hours

Updated Estimated Total Annual Burden Hours: 116,100 initial annual burden hours; 61,300 ongoing burden hours.

Recordkeeping Burden

Prior Est'd # of Covered Entities	Prior Est'd Total Annual Burden Hours per respondent	Prior Est'd Total Annual Burden Hrs. per fiscal year	Prior Estimated Annual Cost per Respondent For Hr. Burden (\$)	Updated Est'd # of Covered Entities	Updated Est'd Total Annual Burden Hours per respondent	Updated Est'd Total Annual Burden Hrs. per fiscal year	Updated Estimated Annual Cost per Respondent For Hr. Burden (\$)
6 (SDRs)	Initially: 300 Ongoing: 254	Initially: 1,800 Ongoing: 1,524	Initially: \$17,733 Ongoing: \$15,014	4 (SDRs)	Initially: 660 Ongoing: 534	Initially: 2,640 Ongoing: 2,136	Initially: \$39,013 Ongoing: \$31,565

Prior Estimated Total Annual Burden Hours: 1,800 initial annual burden hours; 1,524 ongoing annual burden hours

Updated Estimated Total Annual Burden Hours: 2,640 initial annual burden hours; 2,136 ongoing annual burden hours

Registration Annual Hour and Cost Burden¹⁴

Est'd # of Covered Entities (a)	Estimated Total Number of Hrs of Annual Burden in a Fiscal Year for all SDRs	Estimated Annual Cost per Respondent to complete Form SDR or filings associated with registration Form SDR ¹⁵	Estimated Start-Up Costs per covered entity (\$)	Estimated Operating Costs per covered entity (\$)
4	Initial: 1,600 ¹⁶ Ongoing: 190	Initial: \$41,988.00 Ongoing: \$4,811.13	\$2-6 million	\$2-4 million

Estimated Total Annual Burden Hours: 1,600 initial annual burden hours; 190 ongoing annual burden hours

Disclosure Burden¹⁷

Est'd # of Covered Entities	Est'd Total Annual Burden Hrs. per response	Estimated Total Number of Hrs of Annual Burden in a Fiscal Year	Estimated Annual Cost per Respondent For Hr. Burden (\$)
4	Initially: 100 Ongoing: 1	Initially: 400 Ongoing: 4	Initially: \$19,897.00 Ongoing: \$104.97

¹⁴ Other than modifying the estimated number of covered entities and related estimates, the registration estimates in this table are identical to those found in the Information Collection 3038-0086 renewal dated April 2, 2015.

¹⁵ In arriving at a wage rate for the hourly costs imposed, Commission staff used the Report on Management & Professional Earnings in the Securities Industry - 2013 published by the Securities Industry and Financial Markets Associations (2013 Report). The wage rate used was determined by 1) calculating the average hourly rate for a paralegal by taking the mean salary for a paralegal (excluding bonuses) and dividing that figure by 2000 annual working hours to arrive at a hourly rate of \$31.00, and 2) calculating a composite (blended) wage rate averaging the mean annual salaries (excluding bonuses) of a Compliance Attorney and a Deputy General Counsel, as published in the 2013 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$73.97. Adding these two figures, the wage rate used in this calculation is \$104.97. The Commission has not collected data relevant to this estimate.

¹⁶ As described above, SDRs located outside the U.S. have an additional initial obligation to file an opinion of counsel. Such opinion of counsel is estimated to require 20 hours to complete and will most likely be completed by an outside legal service provider estimated to cost \$400 per hour. Therefore, the total cost to complete an opinion of counsel is estimated to be \$8,000 in addition to the initial cost estimated in the table.

¹⁷ Other than modifying the estimated number of covered entities and related estimates, the registration estimates in this table are identical to those found in the Information Collection 3038-0086 renewal dated April 2, 2015.

Estimated Total Annual Burden Hours: 400 initial annual burden hours; 4 ongoing annual burden hours

Annual Burden Hours		
Entity	Prior aggregate annual burden hours (all entities)	Aggregate annual burden hours (all entities)
4 SDRs	340,230	142,370
300 ADRs/AFRs	0	42,000

Annual Costs			
Entity	Prior aggregate annual cost (all entities)		Amended aggregate cost (all entities)
4 SDRs	80,978,370	(25,034,390)	55,943,979
300 ADRs/AFRs	0	12,432,000	12,432,000