

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

OMB CONTROL NUMBER 3038-0075

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 November 6, 2013, the Commission issued final rules implementing statutory provisions pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and imposing requirements on SDs and MSPs with respect to the treatment of collateral posted by their counterparties to margin, guarantee, or secure uncleared swaps.¹ Additionally, the final rule includes revisions to ensure that, for purposes of subchapter IV of chapter 7 of the Bankruptcy Code, securities held in a portfolio margining account that is a futures account or a Cleared Swaps Customer Account constitute “customer property”; and owners of such accounts constitute “customers.”²

Specifically, section 724(c) of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to add, as section 4s(l) thereof, 7 U.S.C. § 6s(l), provisions concerning the rights of counterparties to swap dealers (“SDs”) and major swap participants (“MSPs”) with respect to the segregation of collateral supplied for margining, guaranteeing, or securing uncleared swaps. Section 4s(l) of the CEA sets forth certain requirements concerning the rights of counterparties of SDs and MSPs with respect to the segregation of money, securities, or other property used to margin, guarantee, or otherwise secure uncleared swaps. Regulation 23.701 implements part of the statutory requirements by specifying that certain information must be provided to counterparties about the terms and conditions of segregation, including price information, to the extent that the SD or MSP has such information, and the identity of one or more independent depositories for segregated collateral. Regulation 23.704 implements the requirements of CEA Section 4s(l)(4), which dictates that, in certain circumstances, an SD or MSP must report to the counterparty, on a quarterly basis, “that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”

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.

As discussed above, the rules establish third party disclosure requirements that are mandated by Section 4s(l) of the CEA, which states that SDs and MSPs must notify their

¹ 78 FR 66621.

² Id.

counterparties of the right to have their initial margin segregated and to maintain the confirmations and elections related to such notices as business records. The third party disclosure requirements are necessary to implement the objectives of Section 4s(1). The data required to be compiled and maintained pursuant to regulation 23.701 and 23.704 would be used by uncleared swap counterparties (and, in some instances, the CFTC and self-regulatory organizations).

For example, the information received by uncleared swap counterparties pursuant to Regulation 23.701 would alert counterparties to their statutory right, if they so choose, to have funds or property used as margin in uncleared swaps transactions with SDs and MSPs kept segregated from the property of the SD or MSP. Likewise, the information provided would further alert counterparties of the need to request such segregation if they wish to exercise this right. Similarly, the information received by uncleared swap counterparties pursuant to Regulation 23.704 would be used to confirm that the back office procedures followed by a SD or MSP with whom they are dealing comply with the agreement of the parties.

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 collections of information required by regulations 23.701 and 23.704 may be conducted 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.

The collections of information do not duplicate any existing collection of information. No laws or regulations requiring similar collections of information involving the relevant entities currently exist.

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

This collection of information will not have a significant 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.

If the collections of information required by regulation 23.701 and 23.704 were performed less frequently it would not effectively serve the function of helping to ensure that counterparties receive the information and protections that they are required to receive under the CEA.

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 collections under regulations 23.701 do not require respondents to report information to the agency more often than quarterly. However, 23.701 requires swap dealers and major swap participants to report to their counterparties prior to the execution of each swap transaction that is not submitted for clearing. It is possible that a swap dealer or major swap participant could engage in swap transactions that are not submitted for clearing more often than quarterly, which would require them to report to their counterparties 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:**

This does not apply to collections under regulation 23.704. Regulation 23.701(a) requires swap dealers and major swap dealers, prior to the execution of each swap transaction that is not submitted for clearing, to provide counterparties with notice, inter alia, that they have the right to require that any Initial Margin the counterparty provides in connection with such transactions be segregated in accordance with Commission regulations, as well as the price of segregation for each separate margin custodian. Similarly, regulation 23.701(d) requires swap dealers and major swap participants, prior to confirming the terms of swaps, to obtain from counterparties confirmation of receipt of the notifications required under 23.701(a). Less frequent reporting (than before execution of swap transactions or before confirming the terms of any swap) would not be sufficient to ensure that counterparties to SDs and MSPs receive the information in sufficient time for it to be useful to them in making decisions. For example, if a swap dealer provided the notification required under 23.701(a)—i.e., that the counterparty has the right to require that Initial Margin be segregated—after a swap was executed, the information would no longer be useful to the counterparty.

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

Respondents are not required to submit more than an original and two copies of any documents to the Commission or third parties.

- **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;**

Not applicable.

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

Not applicable.

- **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 collection does not involve any pledge of confidentiality.

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The Commission has 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.

A copy of the *Federal Register* notice soliciting comments on this collection (82 Fed. Reg. 22118, May 12, 2017) is attached. The Commission received no relevant comments.

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.

Does not apply. No such circumstances are anticipated.

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

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 a respondent’s data set forth in parts 145 and 147 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.

The regulations covered by this collection do not require the giving of sensitive information, as that term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A.

Section 23.701

The Commission is reducing the estimated number of entities from 125 to 102 to reflect the number of entities that are registered as SDs. There are, at the time of this writing, no registered MSPs.³ Otherwise, the Commission believes that the estimates herein align with the previous Commission numbers, with the exception of the reduction in the number of entities affected.

The Commission continues to estimate that disclosures required by regulation 23.701 would require approximately 2 hours of work per disclosure, which could be performed by staff with a salary level of approximately \$20 per hour. The Commission further estimates that the average dollar cost of the disclosure per hour will be \$50, giving a cost of \$100 for 2 hours of work.⁴ The Commission is adjusting the estimated number of disclosures per SD per year based on the reduction, noted above, in the estimate of the total number of SDs from about 125 to about 102. Further, the Commission continues to estimate that each SD and MSP would, on average, make the disclosure to approximately 1300 counterparties each year.

In the final rule, the Commission estimated that regulation 23.701 would require a total of approximately 162,500 disclosures per year, generating an estimated total annual information collection burden of approximately 325,000 hours and cost of \$16,250,000.⁵ After experience with the rule, and based on the reduction of the number of entities affected, the Commission now believes that regulation 23.701 will require a total of approximately 132,600 disclosures per year, generating an estimated total annual information collection burden of approximately 265,200 hours and a cost of \$13,260,000.

³ The discussion would otherwise also apply to MSPs.

⁴ This estimate is based on the assumption that about three quarters of the work will be done by junior level staff with a salary of approximately \$25 per hour and that about one quarter of the work will be done by senior level staff with a salary of approximately \$100 per hour. Compare SIFMA, Report on Management and Professional Earnings in the Securities Industry-2013 at 100 (mean compensation for a junior level compliance specialist in the survey equaled \$48,100 per year, an hourly equivalent of approximately \$25), 279 (mean total compensation for a compliance attorney in the survey equaled \$133,059 per year, an hourly equivalent of approximately \$65).

⁵ 78 FR 66621.

Section 23.704

The Commission continues to estimate, that regulation 23.704 would require a total of approximately 2600 disclosures per year per entity. Given the reduction in the number of entities from 125 to 102, the Commission believes that regulation 23.704 will require, on an ongoing basis, a total of approximately 265,200 disclosures per year generating an estimated total annual information collection burden of approximately \$2,172,600 million.⁶ The Commission is adjusting this estimate based on the reduced estimate of the number of affected SDs from 125 to 102, and is continuing to use the final rule's estimate of 1300 counterparties per SD. The Commission assumes for purposes of this calculation that half of counterparties would elect not to segregate, and would receive the required quarterly disclosure, meaning that, on average, each SD (or MSP) would make the disclosure to 650 of its counterparties (1/2 of 1300) four times per year, for a total of 2600 disclosures per year.

The Commission estimates the annual cost to be \$21,300 per SD/MSP comprising eighteen hours for the Chief Compliance Officer with a salary level of approximately \$100 per hour and the annual cost of 780 hours for junior compliance staff with a salary level of approximately \$25 per hour, multiplied by an estimated 102 SDs/MSPs.⁷

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**

⁶ 78 FR 66621

⁷ This estimate is based on the assumption that about three quarters of the work will be done by junior level staff with a salary of approximately \$25 per hour and that about one quarter of the work will be done by senior level staff with a salary of approximately \$100 per hour. Compare SIFMA, Report on Management and Professional Earnings in the Securities Industry-2013 at 100 (mean total compensation for a junior level compliance specialist in the survey equaled \$48,100 per year, an hourly equivalent of approximately \$25), 279 (mean total compensation for a compliance attorney in the survey equaled \$133,059 per year, an hourly equivalent of approximately \$65), 192 (mean total compensation for chief compliance officer equaled \$192,367, an hourly equivalent of approximately \$92).

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 disclosures required by regulations 23.701 and 23.704 involves information that SDs and MSPs generate and use in the usual and customary ordinary course of their business. We estimate that the required disclosures will not require any modifications to, or any additional maintenance of, existing systems within SDs and MSPs.

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 collection of information is not expected to impose significant annual costs on the Federal Government because it principally involves a requirement for certain private parties to keep records and make disclosures to other private parties with whom they do business.

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

The burdens have been adjusted to reflect the Commission's estimate of the current number of affected respondents.

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.

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.

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.

Does not apply.

Attachment A

OMB Collection File 3038-0091

ANNUAL ESTIMATED BURDENS

THIRD-PARTY DISCLOSURE BURDEN

Regulations (17 CFR)	Estimated number of entities	Annual responses per entity	Total annual responses	Estimated number of hours per response	Estimated average cost per response	Total annual burden- hours	Total annual burden-cost
23.701	102	1,300	132,600	2	\$100	265,200	\$13,260,000
23.704	102	2,600*	265,200	.31	\$8.192	82,212	\$2,172,600

*The 2600 reports per annum estimate is based on each entity making quarterly reports to 650 counterparties (4 x 650 = 2600 reports per year).