

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

**OMB CONTROL NUMBER 3038-0096**

### 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, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.<sup>1</sup> Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to establish a comprehensive new regulatory framework for swaps. Section 727 of the Dodd-Frank Act specifically required that each swap subject to the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) jurisdiction be reported to a newly-created registered entity, the swap data repository (“SDR”). Section 728 of the Dodd-Frank Act specifically required the Commission to establish standards for swap data recordkeeping and reporting, including the data elements to be collected and maintained by SDRs for each swap. Section 729 of the Dodd-Frank Act required that at least one counterparty to each swap have an obligation to report data concerning the swap and provided for data reporting to the Commission for swaps not accepted by an SDR. On December 20, 2011, the Commission adopted 17 CFR 45 (“Part 45”) to establish swap data recordkeeping and reporting requirements mandated by the Dodd-Frank Act. The information collection is necessary to fulfill the Commission’s regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention.

This supporting statement relates to the amendment of the existing collection of information required by Part 45 due to the Commission’s proposed changes to Part 39 of its regulations to establish a regulatory framework for exempt derivatives clearing organizations (“DCOs”), pursuant to Section 5b(h) of the CEA.<sup>2</sup> Specifically, proposed Regulation 39.6(d) would require that if a swap cleared through an exempt DCO has been reported to a registered swap data repository (SDR) pursuant to Part 45 of the Commission’s regulations, the exempt DCO must report to an SDR data regarding the two swaps resulting from the novation of the original swap. In addition, an exempt DCO would be required to report the termination of the original swap accepted for clearing by the exempt DCO to the SDR to which the original swap was reported. Although Part 45 imposes recordkeeping and reporting requirements on a number of registered entities and market participants, including registered DCOs, the proposed changes would affect only the reporting burden for exempt DCOs. Because exempt DCOs’ clearing of swaps will be limited to proprietary positions of U.S. persons that are clearing members or affiliates of clearing members of that clearing organization, the reporting burden under Part 45 is anticipated to be significantly lower than that applicable to registered DCOs.

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<sup>1</sup> Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. 7a-1(h).

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 Commission uses the data required to be reported by Part 45 to fulfill its regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention. Data reported by exempt DCOs would be used to monitor the proprietary swap positions of U.S. persons.

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 swap data required to be reported by Part 45 is required to be reported 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 Part 45 information that would be required to be reported by exempt DCOs pursuant to proposed Regulation 39.6(d) is not otherwise available to the Commission from any other source. There is no similar information collection by the Commission or other agencies. The information collection is not otherwise available from any other source. To the maximum extent possible, the information collection was designed to avoid duplication. In all cases where it was possible to leverage information collections contained in other rulemakings, the Commission elected not to impose collections that would increase burden.

5. If the collection of information involves small business or other small entities, describe the methods used to minimize burden.

The Commission has previously established certain definitions of “small entities” to be used in evaluating the impact of Commission regulations on such entities in accordance with the Regulatory Flexibility Act (“RFA”). In its previous determinations, the Commission has concluded that DCOs are not small entities for the purposes of the RFA. The proposed changes to the collection would apply only to exempt DCOs, and therefore would not affect any 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 failure of a reporting entity to report a swap, including lifecycle events of that swap, for regulatory oversight purposes under part 45 would hinder the Commission’s ability to oversee the swaps market, including the identification of the concentration of risks in the market.

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;

Part 45 requires reporting directly to the Commission only in the exceptional case of a swap in an asset class for which no SDR accepts swap data. Such reporting will be required only when requested by the Commission and has not occurred since the Commission adopted Part 45 on December 20, 2011.

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

This question does not apply. Part 45 does not require written responses to a collection of information in fewer than 30 days after receipt.

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

This question does not apply. Part 45 does not require the submission of any original documents or copies of documents. Part 45 requires electronic reporting.

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

Although not applicable to the proposed rules for exempt DCOs, Section 45.2(c) requires that records related to each swap be kept throughout the life of the swap and for a period of at least five years following the final termination of the swap. This retention period is required because swap transactions can continue to exist over substantial periods of time, during which their key economic terms can change. Accordingly, swaps must be monitored by the Commission and other financial regulators throughout their existence, pursuant to the Dodd-Frank Act.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

This question does not apply. Part 45 does not require nor involve any statistical surveys.

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

This question does not apply. Part 45 does not require nor involve any statistical data classification.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

This question does not apply. Part 45 does not require nor 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's regulations require SDRs to maintain safeguards against the misappropriation or misuse of swap data. The Commission is prohibited (save for limited exceptions) from disclosing swap data pursuant to Section 8 of the CEA. 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.

The Commission is publishing a notice of proposed rulemaking (NPRM) in the *Federal Register*. The NPRM includes a request for comment on all aspects of the proposed regulations, as well as requests for comment on several specific provisions and issues (including all aspects of the proposed inform collection requirements). The NPRM will also notify the public and other federal agencies that the Commission will submit an information collection request.<sup>3</sup>

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances are anticipated.

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

This question does not apply. This information collection does not involve the provision of any payment or gift to respondents.

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

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<sup>3</sup> See 83 FR 39923 (Aug. 13, 2018).

The Commission does not provide respondents with an assurance of confidentiality. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, 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. Part 45 does not require or request the provision of sensitive information, as that term is used in Question 11.

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

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

The Commission is proposing to request a new information collection under OMB Control No. 3038-0096 to account for proposed amendments to Commission regulations to adopt procedures and conditions for exemption from DCO registration. All other burdens and costs covered by existing collection 3038-0096 have not been affected by the proposed rule.

The revised burden hours and annual costs for this PRA collection that are anticipated based on the proposed rule are included in Attachment A to this Supporting Statement. The annual burden for this collection due to the proposed changes would increase by 1393 hours.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.

The Commission has calculated the additional burden hours and costs associated with this collection. These additional costs include costs for exempt DCOs associated with establishing SDR connections; and annual maintenance costs for exempt DCOs to maintain connections to SDRs. In practice, due to the limited extent to which exempt DCOs are clearing for U.S. persons, we expect that each exempt DCO will need to connect, and maintain such connection, to one SDR rather than all SDRs as assumed in the burden estimate for registered DCOs.

In calculating these cost figures, the Commission estimated the appropriate wage rate based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”). Commission staff arrived at an hourly rate of \$75.98 using figures from 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 1800-hour work-year and multiplied by 1.3 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)” (30% weight); “programmer” (30%); “compliance advisor (intermediate)” (20%); “systems analyst” (10%), and “assistant/associate general counsel” (10%).

Establishing Exempt DCO to SDR Connections (Annualized Start-Up Costs)

The proposed rules would require that if a clearing member clears through the exempt DCO a swap that has been reported to an SDR pursuant to Part 45, then the exempt DCO must report to an SDR data regarding the two swaps resulting from the novation of the original swap submitted for clearing. Based on the estimated cost per hour of \$75.98 described above, the one-time hours burden will result in a start-up cost of \$85,478 per exempt DCO.<sup>4</sup>

Maintenance of Exempt DCO to SDR Connections (Operation and Maintenance Costs)

The Commission previously estimated that registered DCOs would each incur costs of \$375,000 per year to maintain SDR connections. As noted in the response to Question 13, due to the limited extent to which exempt DCOs are clearing for U.S. persons, the Commission expects that each exempt DCO will need to connect, and maintain such connection, to one SDR rather than all SDRs as assumed in the prior burden estimate for registered DCOs. With 7 exempt DCOs, the aggregate annual cost for this component of the collection would be \$656,250.<sup>5</sup>

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

It is not anticipated that the final regulations will impose any additional costs to the Federal Government.

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

This submission includes adjustments to burden hours to account for the Commission’s proposed requirements for exempt DCOs, including reporting of proprietary swap positions of U.S. persons that are clearing members or affiliates of clearing members of that clearing organization. The additional burden relates solely to the proposed new category of exempt DCO.

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<sup>4</sup> The prior burden estimate for registered DCOs under OMB Control No. 3038-0096 estimated \$341,910 for each DCO to establish connections to SDRs. Assuming connection to only one of the four SDRs, the estimate for exempt DCOs is:  $\frac{1}{4} \times \$341,910 = \$85,478$ .

<sup>5</sup> Based on the same assumption as noted above with respect to connection to only one of four SDRs, the estimate for exempt DCOs is:  $(\frac{1}{4} \times \$ 375,000) \times 7$  exempt DCOs = \$656,250.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

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

This question does not apply.



Attachment A

New Reporting Category of Exempt DCOs Only

| 1.<br>Regulation(s)   | 2.<br>Estimated Number of Respondents | 3.<br>Estimated Number of Reports by Each Respondent <sup>6</sup> | 4.<br>Estimated Average Number of Burden Hours per Response | 5.<br>Annual Number of Burden Hours per Respondent<br>(3 x 4) | 6.<br>Estimated Average Burden Hour Cost <sup>7</sup> | 7.<br>Total Average Hour Burden Cost Per Respondent<br>(5 x 6) | 8.<br>Total Annual Responses<br>(2 x 3) | 9.<br>Total Annual Number of Burden Hours<br>(2 x 5) | 10.<br>Total Annual Burden Hour Cost of All Responses<br>(2 x 7) |
|---|---------------------------------------|---|---|---|---|--|---|--|--|
| Proposed Regulation 39.6(d) – Swap Data Reporting Requirements <sup>8</sup> | 7                                     | 1987  | .1  | 199   | \$70  | \$13,930   | 13,909                                  | 1393   | \$97,510   |

<sup>6</sup> Estimate is based on the number of reports to SDRs by existing exempt DCOs during 2017.

<sup>7</sup> Average salary for a risk management specialist is \$144,000 per year according to the SIFMA Report on Management and Professional Earnings in the Securities Industry. Dividing \$144,000 per year by 80 hours per 2 weeks for 26 pay periods yields \$70 per hour.

<sup>8</sup> The Commission estimates that there would be a total of 7 exempt DCOs subject to Part 45 reporting requirements. This total includes 4 existing exempt DCOs and 3 pending applicants.