

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0085

### 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.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended Section 2(h)(1) of the Commodity Exchange Act (“CEA”)<sup>1</sup> to provide that it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization if the swap is required to be cleared. However, Section 2(h)(7) of the CEA, as added by the Dodd-Frank Act, also provides that a swap otherwise subject to the clearing requirement is eligible for an elective exception from clearing if one party to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the Commodity Futures Trading Commission (“Commission”), in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps (the “end-user exception”).

The Commission adopted Rule 39.6 to specify requirements for electing the end-user exception, including the reporting of certain information to a registered swap data repository (“SDR”) or the Commission.<sup>2</sup> Following the publication of Rule 39.6, the Commission recodified it as Rule 50.50 (17 CFR 50.50).<sup>3</sup> The Commission is renewing the OMB control number 3038-0085. This information is necessary as part of the overall package of swap-related information that must generally be submitted by reporting counterparties to SDRs under the Dodd-Frank Act.

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 data is used by the Commission to assess and monitor the use of the end-user exception to the swap clearing requirement in order to prevent evasion of the clearing requirement. This information also may be available and may be used for regulatory purposes by other governmental agencies, including the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Farm Credit Administration, Federal Housing Finance Agency, Financial Stability Oversight Council, Securities and Exchange Commission, Department of Justice, and any other person the

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<sup>1</sup> 7 U.S.C. 1 *et seq.*

<sup>2</sup> 77 FR 42560 (July 19, 2012).

<sup>3</sup> See 77 FR 74284, 74314 (Dec. 13, 2012).

Commission determines to be appropriate, including foreign financial supervisors, foreign central banks, and foreign ministries.

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 of the information collection requirements involve the use of certain electronic collection protocols, such as downloadable forms, email, and the internet. All required submissions may be submitted electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The required information is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available for public disclosure through any other source.

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.

The collection of information will not have a significant impact on a substantial number of small entities. However, in order to minimize the burdens this collection of information may have on small entities, the Commission permits end-users to rely on a swap counterparty to submit the information, or to submit the information on an annual election form (rather than for each swap transaction).

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.

Rule 50.50 imposes a one-time reporting requirement for each swap for which the end-user exception is elected. Certain information may be reported by the electing end-user on an annual election form once each year. Without the reporting required under Rule 50.50, the Commission would not be able to adequately monitor and prevent abuse of the end-user exception to the Commission's swap clearing requirement.

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;

See response to Question 6. This information collection requires a counterparty to the swap to comply with a one-time reporting requirement each time a new swap is executed. Alternatively, an eligible end-user may choose to file an annual report to cover all swaps executed during the next 365 days (i.e., once per year).

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

There is no requirement for a written response.

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

Respondents are not required to submit more than one copy of any documents containing responsive information.

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

The rule does not impose recordkeeping requirements.

- 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;

The rule does not involve statistical surveys.

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

The rule does not involve the use of statistical data.

- 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 rule does not involve a 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. Information submitted under Rule 50.50 is protected by these provisions in the CEA to the maximum extent allowed.

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.

As part of the rulemaking process, the Commission sought public comment on all aspects of the proposed collection of information when Rule 50.50 was proposed in the Federal Register.<sup>4</sup> The Commission continues to consult with respondents periodically, and at least once every three years to obtain views on the reporting requirements.

This notice of a renewal of this collection of information was published in the Federal Register, 83 FR 39991 (Aug. 13, 2018). Thus, members of the public, including respondents, were provided an opportunity to comment on the rule and related matters, including issues concerning recordkeeping and other paperwork burdens. One comment was received, on October 12, 2018, from the American Bankers Association (“ABA”). The ABA’s comment letter urges the Commission to amend Rule 50.50(b)(2) to permit entities to report less frequently than annually. Rule 50.50 authorizes this collection of information broadly, and Rule 50.50(b)(2) specifically permits entities to report the information required under Rule 50.50(b)(1) on an annual, rather than on a swap-by-swap, basis. Under the current requirement, entities electing the end-user exception must submit a report at least annually. The ABA’s comment requests that the Commission revise the text of Rule 50.50(b)(2) to require an initial report, with further reporting required only if there has been a material change in circumstances. This change would permit end-users, in certain circumstances, to report this information less frequently than annually. The ABA acknowledged that such a change to a Commission rule would require publishing a notice of proposed rulemaking for public comment. The ABA’s comment did not address the Commission’s estimated number of respondents or estimated average number of

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<sup>4</sup> 75 FR 80747, 80755-56 (Dec. 23, 2010).

burden hours per respondent required to comply with this reporting requirement. Therefore, the ABA's request for an amendment to the rule text in Commission regulation 50.50 is outside the scope of the request for an extension of the subject collection.

The Commission continues to believe that its estimates for the number of respondents and the aggregate number of burden hours for this collection of information, as published in the Federal Register, 83 FR 39991 (Aug. 13, 2018), are appropriate.

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

This question does not apply.

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

The Commission does not provide respondents with an assurance of confidentiality. The Commission fully complies with section 8(a)(1) of the CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The rule does not require the reporting 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 estimates that there are approximately 1,815 end-users who elect to report their end-user election information on an annual form in a given year, based on data submitted by an SDR registered with the Commission. Commission staff calculated the number of end-users that had submitted an election form during the 12-month period from July 1, 2016 to June 30, 2017, and from July 1, 2017 to June 30, 2018. For the 12-month period from July 1, 2016 to June 30, 2017, there were approximately 1,920 end-users that had submitted an end-user election form. For the 12-month period from July 1, 2017 to June 30, 2018, there were approximately 1,710 end-users that had submitted an end-user election form. The Commission calculated the average number of respondents over these two years and estimates that approximately 1,815 end-users elect to submit an end-user election form to an SDR each year. The Commission did not observe a significant number of entities submitting more than one form during the 12 month period. This confirms the Commission's understanding that a majority of end-users elect to submit an annual end-user election form.

The Commission estimates that preparing the information that must be reported under Rule 50.50 requires between 10 minutes and an hour of burden, or the average of 35 minutes (60+10 divided by 2), or .58 hour (35 divided by 60), per end-user per year. The number of burden hours per end-user may vary depending on various factors, such as the number of swaps entered into by that end-user in the given year and whether the end-user completes the annual election form instead of the swap-by-swap form. The Commission expects that returning filers spend between 10-30 minutes preparing the required filing, but entities electing the exception for the first time may require additional time to fill out the form and could be expected to take between 30-60 minutes to read and complete the filing. After analyzing end-user election filings between 2013 and 2017, the Commission estimates that as many as 44% of filers are repeat filers and would be expected to take less time (i.e., 10 to 30 minutes) to report the information required under Rule 50.50. The Commission conservatively estimates that approximately 50% of filers will be returning filers in the future, as the number of entities that have filed in the past increases. Of course, there may be some returning filers who need to review the conditions and filing requirements for electing the end-user exception to the clearing requirement and may take longer than the estimated 10 to 30 minutes. In sum, the average burden hour estimate of 35 minutes or .58 hour appears to capture the estimated burden hour required per respondent.

Therefore, the number of estimated aggregate annual burden hours is 1053 hours<sup>5</sup>. The Commission estimates that the annualized cost to a respondent is between approximately \$10.07 and \$60.40, reflecting its estimate that the report will require between 10 minutes and one hour of burden, per end-user per year. The Commission based its calculations on an hourly wage rate<sup>6</sup> of \$60.40 to comply with the rule. The Commission estimates that the aggregate annualized cost is between \$18,277<sup>7</sup> and \$109,626.<sup>8</sup>

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.

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Assuming each respondent spends 35 minutes average (or 0.58 hr. on each response): 1815 x .58 = 1052.70 rounded up to 1053.

<sup>6</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2013 by the Securities Industry and Financial Markets Associations (2013 Report). The wage rate used 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 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$60.40.

<sup>7</sup>The new figure is calculated using \$10.07 (for 10 minutes of work) x 1,815 respondents = \$18, 277.05

<sup>8</sup>The new figure is calculated using \$60.40 (for one hour of work) x 1,815 respondents = \$109, 626.

- 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 does not expect any capital or start-up costs, or operational or maintenance costs associated with the renewal of this collection of information.

To the extent that the collection is being renewed, the equipment and services that the end-user would be required to use to provide the reporting are expected to be already available to the end-user in the course of executing the swap.

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.

No additional costs to the Federal Government will result from the renewal of this collection of information.

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

The Commission has adjusted the estimated annual reporting hour burden as well as the annual reporting cost burden. The annual hour and cost burdens were increased because the estimated numbers of respondents has increased since the previous notice of renewal of the collection of information. The Commission is adjusting the estimated number of respondents to account for the additional entities that have elected the end-user exception during the previous two years.

Because the number of entities responding to this collection of information has increased to 1815 from the Commission's previous estimate of 1092, the Commission updated the total annual reporting hour burden and the annual reporting cost burden to reflect the updated estimate for the number of 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.

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.

No exceptions exist.

## Attachment A

### OMB Control Number 3038-0085 –Rule 50.50 End-User Notification of Non-Cleared Swap.

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (6 x 9)
50.50	1,815	1	.58 <sup>9</sup>	.58	\$35.03 <sup>10</sup>	\$20.32	1,815	1052.7	\$ 36,876.08

<sup>9</sup> This is the average burden hour of 10 minutes to 1 hour.

<sup>10</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2013 by the Securities Industry and Financial Markets Associations (2013 Report). The wage rate used 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 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$60.40. Because Commission staff estimated the average number of burden hours per response to be .58 hours, Commission staff multiplied .58 by \$60.40 to arrive at \$35.03.