

**SUPPORTING STATEMENT FOR AMENDMENT TO INFORMATION
COLLECTIONS**

**Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading
Relationship Documentation**

(Uncleared Margin No-Deal Brexit Representation Requirement)

OMB CONTROL NUMBER 3038-0088

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.

Pursuant to the authority granted to it by Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)), the Commodity Futures Trading Commission (Commission or CFTC) promulgated regulation 23.504, among others. This regulation obligates swap dealers (SDs) and major swap participants (MSPs) to develop and retain written swap trading relationship documentation, which is essential to ensuring that SDs and MSPs document their swaps.

The United Kingdom (UK) has provided formal notice of its intention to withdraw from the European Union (EU). This withdrawal may happen as soon as April 12, 2019 and may transpire without a negotiated agreement between the UK and EU (No-deal Brexit). To the extent this event occurs, affected SDs and MSPs may be involved in transfers of certain uncleared swaps, including uncleared swaps that were entered into before the relevant compliance dates under the CFTC Margin Rule¹ or the Prudential Margin Rule and that, therefore, may not be subject to such rules, in whole or in part.

The Commission is adopting an interim final rule (Final Rule) amending the CFTC Margin Rule such that the date used for purposes of determining whether an uncleared swap was entered into prior to an applicable compliance date will not change under the CFTC Margin Rule if the swap is transferred, and thereby amended, in accordance with the terms of the Final Rule in respect of any such transfer. In doing so, the Final Rule, subject to its requirements, allows an uncleared swap to retain its legacy status when transferred in connection with a No-deal Brexit. As a condition to the relief in the Final Rule, in certain cases, the Commission requires that the transferor of a legacy swap make certain representations to the SD or MSP that is a party to the swap in the swap trading relationship documentation relating to such transfer.

¹ Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (CFTC Margin Rule). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150 - 23.159, 23.161. The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Farm Credit Administration, and the Federal Housing Finance Agency published final margin requirements in November 2015. See Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (Prudential Margin Rule).

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.

Commission staff will use the information required to be preserved when conducting the Commission's examination and oversight program with respect to the affected registrants.

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 regulations require that recordkeeping generally be performed in accordance with Commission regulation 1.31, which permits the use of electronic regulatory records.

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 information required under the Final Rule is not already collected by the Commission for any other purpose, collected by any other agency, or 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 Form 83-I), describe the methods used to minimize burden.

The collection of the required information does not involve any small businesses or small entities. The Final Rule only affects certain SDs and MSPs and their covered counterparties, all of which are required to be Eligible Contract Participants (ECPs). The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the Regulatory Flexibility Act.²

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.

Failure to maintain the records required by the regulations would adversely affect the Commission's ability to ensure the affected registrants' compliance with their obligations under the Commodity Exchange Act (CEA or Act) and Commission regulations.

² See Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs) and Opting Out of Segregation, 66 FR 20740, 20743 (April 25, 2001) (ECPs).

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 Final Rule does not contain reporting obligations.

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

The Final Rule does not contain reporting obligations.

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

- The Final Rule does not contain reporting obligations.

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

Swap trading relationship documentation is required to be maintained pursuant to Commission regulation 23.203 (and, by extension, Commission regulation 1.31). Commission regulation 1.31 expressly requires that books and records required to be kept by the CEA or Commission regulations be retained for certain specified periods. Other than with respect to oral communications, the shortest of these periods is five years from the date of creation.

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

No statistical surveys are involved.

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

The requirements do not involve use of any statistical data classification.

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

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

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

This question does not apply. In any event, the Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations are set forth in 17 CFR Part 145.

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.

Concurrent with the publication of the Final Rule in the **Federal Register** (Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12065 (Apr. 1, 2019)), the Commission posted a notice in the **Federal Register** soliciting comments on this collection of information (84 FR 12233 (Apr. 1, 2019)).

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 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.

Not applicable. 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.

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 public positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of a respondent’s data. These are set forth in the Commission’s regulations at part 145.

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

This question does not apply. None of the required information is sensitive, as that term is used in Question 11.

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

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

See Attachment A.

The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$100.00 per hour. The Commission believes that this is an appropriate salary estimate for purposes of this regulation.

In support of this determination, the Commission notes that the salary estimate is based upon May 2017 Bureau of Labor Statistics’ findings of National Occupation Employment and Wage Estimates, United States³, including the mean hourly wage of an employee under

³ See http://www.bls.gov/oes/current/oes_nat.htm.

occupation code 23-1011, “Lawyers,” that is employed by the “Securities, Commodity Contracts, and Other Financial Investments and Related Activities Industry,” which is \$94.20; the mean hourly wage of an employee under occupation code 11-3031, “Financial Managers,” in the same industry, which is \$97.82; and the mean hourly wage of an employee under occupation code-13-1041, “Compliance Officers” in the same industry, which is \$43.27. The Commission also notes that, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that some respondents may be large financial institutions whose employees’ salaries may exceed the mean wage. The Commission also observes that the Securities Industry and Financial Markets Association’s Report on “Management & Professional Earnings in the Securities Industry – 2013” estimates the average wage of a compliance attorney or compliance staffer (including chief compliance officers and directors of compliance) in the United States at only \$53.71 per hour. The Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the Final Rule and that outside counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fulfill a requested assignment. While the Commission is uncertain about the billing rates that these respondents may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Any determination to use outside counsel, however, is at the discretion of the respondent.

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 information collections required by the Final Rule does not involve any capital or start-up capital, operations or maintenance costs as the Commission anticipates that these costs have already been incurred by the affected respondents and are part of customary or usual business practices.

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 Final Rule does not 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.

As a condition to the relief in the Final Rule, in certain cases, the Commission requires that the transferor of a legacy swap make certain representations to the SD or MSP that is a party to the swap in the swap trading relationship documentation relating to such transfer. The Commission is revising the burden of this OMB number to reflect the inclusion of this requirement in the Final Rule.

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
Uncleared Margin No-Deal Brexit Representation Requirement

OMB Collection File 3038-0088

The Commission estimates the aggregate additional hours burden associated with the information collection in the Final Rule is 1,404 hours. This burden results from SDs and MSPs including the representation in Commission regulation 23.161(d)(2)(ii)(B) in their swap trading relationship documentation relating to the transfer of legacy swaps.

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	Estimated Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Annual Hour Burden Per Registrant	Estimated Aggregate Hour Burden	Estimated Annual Cost Per Registrant	Estimated Aggregate Annual Cost
23.161(d)(2)(ii)(B)	52	At least once per counterpart y	540	28,080 [52 x 540]	.05 hours	27 hours [540 x .05 hours]	1,404 hours [28,080 * .05 hours]	\$2,700 [27 hours x \$100]	\$140,400 [1,404 x \$100]