

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**“Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in**  
**Connection with Portfolio Margining of Swaps and Security-Based Swaps”**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

On December 14, 2012, the Commission issued an order (“Order”) granting conditional exemptive relief from compliance with certain provisions of the Securities Exchange Act of 1934 (“Exchange Act”) in connection with a program to commingle and portfolio margin customer positions in cleared credit default swaps, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act.<sup>1</sup> The Order was issued pursuant to Section 36 of the Exchange Act.

Among other things, the Order requires firms dually registered as a broker-dealer and futures commission merchant that elect to offer a program to commingle and portfolio margin customer positions in cleared credit default swaps in customer accounts maintained in accordance with Section 4d(f) of the Commodity Exchange Act and rules thereunder, to obtain certain agreements and opinions from its customers regarding the applicable regulatory regime, and to make certain disclosures to its customers before receiving any money, securities, or property of a customer to margin, guarantee, or secure positions consisting of cleared credit default swaps, which include both swaps and security-based swaps, under a program to commingle and portfolio margin credit default swaps. The Order would also require firms dually registered as a broker-dealer and futures commission merchant that elect to offer a program to commingle and portfolio margin credit default swaps positions in customer accounts maintained in accordance with Section 4d(f) of the and rules thereunder, to maintain minimum margin levels using a margin methodology approved by the Commission or the Commission staff.

**2. Purpose and Use of Information Collection**

The information collection requirements are intended (1) to provide customers of broker-dealers and futures commission merchants with appropriate agreements, disclosures, and opinions to clarify key aspects of the regulatory framework that will govern their participation in a program to commingle and portfolio margin cleared credit default swap positions and (2) to ensure that appropriate levels of margin are collected.

**3. Consideration Given to Information Technology**

---

<sup>1</sup> See Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012) available at <https://www.sec.gov/rules/exorders/2012/34-68433.pdf>.

Use of any particular technology is not mandated to satisfy the information collection. Advances in information technology, such as advances in word processing and document production, may reduce the burden of producing and transmitting the contracts, disclosures, and legal opinions.

#### **4. Duplication**

Because the Order provides original, conditional exemptive relief, the Commission does not believe that any of the information collection duplicates any existing information collection. Furthermore, because respondents were not required to provide the disclosures, opinions, and other information required by the information collection prior to the Order, the Commission does not believe that any existing information was already available to satisfy the purposes of the information collection.

#### **5. Effect on Small Entities**

None of the respondents to the information collection will be small businesses or other small entities.

#### **6. Consequences of Not Conducting Collection**

Not imposing the information collection requirements would deprive customers of broker-dealers and futures commission merchants that elect to offer a program to commingle and portfolio margin customer positions in cleared credit default swaps in accounts maintained in accordance with Section 4d(f) of the Commodities Exchange Act and the rules thereunder of disclosures and other information needed to make a determination about whether to participate in such a program. Not imposing the collection of information requirements would also deprive the Commission of information needed to ensure that appropriate margins are collected.

Reducing the information available to customers may discourage customer participation in portfolio margining programs and/or lead to confusion about the parameters of such programs and the protections afforded to customers in such programs. Also, if the Commission is unable to obtain the necessary information from a broker-dealer/future commission merchant, the Commission may not be able to approve of the broker-dealer/future commission merchant's margin methodology and ensure that the appropriate margin has been collected.

#### **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

#### **8. Consultations Outside the Agency**

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

#### **9. Payment or Gift**

The collection of information does not provide any payment or gift to respondents.

## **10. Confidentiality**

The information collection provides that to the extent the Commission receives confidential information, the Commission is committed to protecting the confidentiality of such information, subject to the provisions of applicable law. Cited as examples are Exchange Act Section 24, 15 U.S.C. 78x (governing the public availability of information obtained by the Commission) and 5 U.S.C. 552 et seq. (Freedom of Information Act—“FOIA”). FOIA Exemption 4 provides an exemption for “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4). FOIA Exemption 8 provides an exemption for matters that are “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.” 5 U.S.C. 552(b)(8).

## **11. Sensitive Questions**

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

## **12. Information Collection Burden**

The collections of information required by the Order would apply to those firms dually registered as a broker-dealer and futures commission merchant that are seeking to offer a program to commingle and portfolio margin customer positions in cleared credit default swaps in customer accounts maintained in accordance with Section 4d(f) of the Commodity Exchange Act.

The Commission estimates that 35 firms may seek to avail themselves of the conditional exemptive relief provided by the Order and therefore would be subject to the information collection. The Commission bases this estimate on the total number of entities that are dually registered as broker-dealers and futures commission merchants.

The Commission estimates that the aggregate annual time burden for all of the 35 respondents is approximately 22,517 hours calculated as follows:

(a) Based on information that the Commission receives on a monthly basis, the Commission estimates that the total number of non-affiliate credit default swap customers across the respondents is approximately 1,193. Therefore, each respondent will have, on average, 34 non-affiliate credit default swap customers (1,193/35). The Commission further estimates that for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(1)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order will impose an initial, one-time average burden of 680 hours

(34 non-affiliate customers times 20 hours per customer) per respondent and an aggregate burden of 23,800 hours for all 35 respondents (680 x 35). This burden is a third-party disclosure burden.

(b) The Commission estimates that each respondent will have, on average, 11 affiliate credit default swap customers and that for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(2)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with affiliate cleared credit default swap customers under paragraph IV(b)(2)(ii) of the Order will impose an initial, one-time burden of 220 hours per respondent (11 affiliate customers times 20 hours per customer) and an aggregate burden of 7,700 hours for all 35 respondents (220 x 35). This burden is a third-party disclosure burden.

(c) The Commission estimates that for each affiliate cleared credit default swap customer a respondent will spend approximately 2 hours developing and reviewing the required opinion of counsel under paragraph IV(b)(2)(iii) of the Order. The Commission therefore estimates that the burden associated with obtaining opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order will impose an initial, one-time burden of 22 hours per respondent (11 affiliate customers times 2 hours per customer) and an aggregate burden for all 35 respondents of 770 hours (22 x 35). This burden is a third-party disclosure burden.

(d) The Commission estimates that the burden associated with seeking the Commission’s approval of margin methodologies under paragraph IV(b)(3) of the Order will impose an initial, one-time burden of 1,000 hours per respondent and an aggregate burden for all 35 respondents of 35,000 hours (1,000 x 35). This burden is a reporting burden.

(e) The Commission estimates that the burden associated with disclosing information to customers under paragraph IV(b)(6) of the Order will impose an initial, one-time burden of 8 hours per respondent and an aggregate burden for all 35 respondents of 280 hours (8 x 35). This burden is a third-party disclosure burden.

The total aggregate one-time burden for all 35 respondents is thus 67,550 hours (32,550 third party disclosure + 35,000 reporting). Amortized over three years, the aggregate burden per year is approximately 22,517 hours.

The following table summarizes the information collection burden:

Burden type	Number of Respondents	Number of responses per respondent	Time Per Response (hours)	Total Burden Per Burden Type (hours)
Initial, one-time third-party disclosure for non-affiliate customers	35	34	20	23,800
Initial, one-time	35	11	20	7700

third-party disclosure for affiliate customers				
Initial, one-time third-party disclosure for affiliate customers	35	11	2	770
Initial, one-time reporting	35	1	1,000	35,000
Initial, one-time third-party disclosure	35	1	8	280
<b>Total One-Time Aggregate Burden (hours)</b>				<b>67,550</b>
<b>Aggregate Burden Per Year Amortized over 3 Years (hours)</b>				<b>22,517</b>

### 13. Costs to Respondents<sup>2</sup>

The Commission estimates that each respondent will incur a one-time cost of \$8,000 in outside legal counsel expenses in connection with obtaining opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order, calculated as follows: (20 hours to obtain opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order) x (\$400 per hour for outside legal counsel) = \$8,000. The one-time aggregate burden for all 35 respondents is thus \$280,000 (8,000 x 35), or approximately \$93,333 per year when amortized over three years.

Burden type	Number of Respondents	Number of Hours of Outside Legal Expenses	Cost of Outside Legal Expenses Per Hour	Total Cost
One-Time Cost in Outside Legal Expenses	35	20	\$400	\$280,000
<b>Aggregate Cost Per Year Amortized over 3 Years</b>				<b>\$93,333</b>

### 14. Costs to Federal Government

The information collection does not impose any cost to the Federal Government.

### 15. Changes in Burden

<sup>2</sup> For purposes of this section, the cost to respondents is a one-time cost, but has been annualized.

The decrease in hour burden from 51,450 hours per year to 22,517 hours per year is due to a decrease in the number of respondents from 45 to 35 and a decrease in the average number of non-affiliate credit default customers per respondent from 109 to 34.

The Commission reduced the total number of respondents from 45 to 35 based on updated data regarding the number of entities that are dually registered as broker-dealers and futures commission merchants.

The Commission reduced the average number of non-affiliate credit default swap customers per respondent from 109 to 34 based on data that the Commission receives on a monthly basis. As a result of that change, the Commission reduced its estimate of the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order from 2,180 hours per respondent to 680 hours per respondent.

The decrease in dollar cost from \$120,000 per year to approximately \$93,333 per year is due to a decrease in the number of respondents from 45 to 35.

#### **16. Information Collection Planned for Statistical Purposes**

Not applicable. The information collection is not used for statistical purposes.

#### **17. Approval to Omit OMB Expiration Date**

The Commission is not seeking approval to omit the OMB expiration date.

#### **18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

### **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.