

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

OMB CONTROL NUMBERS 3038-0068 and 3038-0083¹

**Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading
Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,**

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.**

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)) amended the Commodity Exchange Act (CEA) by adding sections 4s(f), 4s(g), and 4s(i), among others.

Pursuant to this authority, the Commission promulgated regulations 23.500-23.505, which obligate swap dealers (SDs) and major swap participants (MSPs) to develop and retain written swap trading relationship documentation. The final regulations also establish requirements for SDs and MSPs regarding swap confirmation, portfolio reconciliation, and portfolio compression. Confirmation, portfolio reconciliation, and portfolio compression are important, post-trade processing mechanisms for reducing risk and improving operational efficiency.

Under the regulations, SDs and MSPs are obligated to maintain records of the policies and procedures required by the rules. SDs and MSPs also are required to develop and retain written records of their swap trading relationship documentation; acknowledgements and confirmations for swap transactions; portfolio reconciliations; and portfolio compression exercises. The information collection obligations imposed by the regulations are necessary to ensure that each swap dealer and major swap participant maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction. The final regulations are essential to ensuring that SDs and MSPs document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises.

On September 22, 2015, the Commission proposed to streamline portfolio reconciliation

¹ Historically, PRA Collections 3038-0068, 3038-0083, and 3038-0088 were renewed as a consolidated collection. See 82 FR 6241 (Feb. 5, 2016). However, on April 1, 2019, the CFTC published an interim final rule (IFR), which allows uncleared swaps to retain its legacy status when transferred in connection with a no-deal Brexit. See 84 FR 122233 This IFR only affects the calculation of burdens in PRA collection 3038-0088. The Supporting Statement now treats ##3038-0068 and 3038-0083 as a consolidated collection; with #3038-0088 being considered independently.

exercises by reducing the number of terms that must be resolved for discrepancies.² On May 6, 2016, the Commission finalized amendments to the definitions of “material terms” and “portfolio reconciliation” to make portfolio reconciliation exercises more efficient and less burdensome to SDs, MSPs, and their counterparties by removing 24 specified data fields from portfolio reconciliation exercises.³ The Commission did so because the 24 excluded data fields did not impact the valuation of swaps or the mutual obligations 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.**

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 storage media.

- 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.**

SDs and MSPs were new categories of registrants under the Dodd-Frank Act. Accordingly, the required information was not already collected by the Commission for any other purpose. It is currently not 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.

- 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.**

² Proposal to Amend the Definition of “Material Terms” for Purposes of Swap Portfolio Reconciliation, 80 FR 57129 (Sept. 22, 2015).

³ Definitions of “Portfolio Reconciliation” and “Material Terms” for Purposes of Swap Portfolio Reconciliation, 81 FR 27309 (May 6, 2016).

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 CEA and Commission regulations to document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises. Failure to comply with the reporting requirements established by the regulation would prohibit the Commission from receiving timely notification of unresolved swap valuation disputes.

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;**

This question does not apply. Certain of the reporting requirements (e.g., reporting of certain valuation disputes) are event-based. Further, certain of the reporting obligations contained in these regulations (the requirements to report swap transactions to swap data repositories and to engage in real time public reporting of swap transaction and pricing data) will not result in any additional cost to SDs and MSPs beyond any costs already described and accounted for in the Commission's part 45 regulations for swap data recordkeeping and reporting, and in the Commission's part 43 regulations governing real-time public reporting of swap transaction data.

- **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.

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

This question does not apply. The regulations do not impose any requirements that would obligate a respondent to submit more than an original and two copies of any document.

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

The recordkeeping requirements set forth in the final regulations mandate that records be maintained in accordance with Commission regulation 23.203 (and, by extension, Commission regulation 1.31), which expressly requires that:

All records required to be kept by the Act and by Commission regulations shall be kept for a period of five years from the date the record was made and shall be readily accessible during the first two (2) years of the five-year period. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator.

- **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. The regulations do 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. The regulations do not require nor involve the 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**

This question does not apply. The regulations do not require 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.**

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.**

A copy of the Federal Register notice soliciting comments on this information collection was published on May 1, 2019, 84 FR 18521. No relevant comments were received.

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.

No such circumstances are anticipated.

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

This question does not apply. No decision to provide any payment or gift to respondents has been made.

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 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. The regulations do not request or require 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.

See Attachment A.

The relevant final regulations were originally proposed in the Confirmation NPRM,⁴ which has the OMB Control Number of 3038-0068.

With respect to the rules in the Confirmation NPRM (and its accompanying OMB Control Number 3038-0068), the Commission now estimates that, as a result of the Final Rule's amendments to Commission regulations that will streamline the portfolio reconciliation process, the burden is 1,276.5 hours, at an annual cost of \$127,650 for each SD and MSP, and an aggregate burden cost for all registrants of \$13,403,250.

In keeping with recent Commission wage rate estimates in the portfolio reconciliation field, an hourly wage rate of \$100 was used for purposes of these cost estimates. Thus, with the exception of that category, the figures in this column reflect the "Estimated Annual Hour Burden Per Registrant" multiplied by \$100. In support of this determination, the Commission notes that the salary estimate is based upon May 2014 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States,⁵ including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities 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 \$43.27.⁶ The Commission also notes that, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that SDs and MSPs are 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 SDs or MSPs may hire outside counsel with expertise in the various regulatory areas covered by the combined final regulations 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 registrants may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour.

The burden hour estimates are as follows:⁷

⁴ 75 FR 81519 (Dec. 28, 2010).

⁵ See http://www.bls.gov/oes/current/oes_nat.htm.

⁶

Confirmation NPRM (OMB Control Number 3038-0068):

Drafting and Updating Policies and Procedures. This hourly burden arises from the time necessary to develop and periodically update the policies and procedures required by the regulations.

Number of registrants: 101.

Frequency of collection: initial implementation, updating as needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 101.

Estimated annual hour burden per registrant: 40 hours.

Estimated aggregate annual hour burden: 4,040 burden hours [101 registrants x 40 hours per registrant].

Acknowledgment and Confirmation Recordkeeping. This hourly burden arises from the requirement that SDs and MSPs make and maintain records of the date and time of transmission to, or receipt from, a counterparty of an acknowledgment or confirmation; the length of time between the acknowledgment and confirmation of each swap; and the length of time between the execution and confirmation of each swap.

Number of registrants: 101.

Frequency of collection: daily.

Estimated number of annual responses per registrant: 252 [252 trading days].

Estimated aggregate number of annual responses: 25,452 [101 registrants x 252 trading days].

Estimated annual hour burden per registrant: 252 [252 trading days x 1 hour per day].

Estimated aggregate annual hour burden: 25,452 burden hours [101 registrants x 252 hours].

Portfolio Reconciliation Recordkeeping. This hourly burden arises from the requirement that SDs and MSPs make and maintain records of the portfolio reconciliation exercises in which they engage.

Number of registrants: 101.

Frequency of collection: daily, weekly, quarterly, or annually.

Estimated number of annual responses per registrant: 8,120.⁸

Estimated aggregate number of annual responses: 820,120 [101 registrants x 8,120 responses].

Estimated annual hour burden per registrant: 804 hours [8,120 x .99 hours per response = 803.88, rounded up equals 804].

Estimated aggregate annual hour burden: 81,204 burden hours [101 registrants x 804 hours per registrant].

⁷ When these regulations were first promulgated, the Commission estimated that 125 SDs and MSPs would register, whereas the actual number of such registrants is 101.

⁸ While the actual number of such registrants is 101, the Commission continues to believe that each such registrant, on average, will have 540 counterparties.

Portfolio Compression Recordkeeping. This hourly burden results from the requirement that SDs and MSPs make and maintain records of the bilateral offsets and portfolio compression exercises in which they participate.

Number of registrants: 101.

Frequency of collection: as needed.

Estimated number of annual responses per registrant: 1,029 [24 multilateral compression records] + [465 bilateral compression exercise records] + [540 bilateral offset records].

Estimated aggregate number of annual responses: 103,929 [101 registrants x 1,029 responses per year].

Estimated annual hour burden per registrant: 178.5 hours [24 multilateral compression records x .5 hours per records] + [465 bilateral compression exercise records x .3 hours per records] + [540 bilateral offset records x .05 hours per record].

Estimated aggregate annual hour burden: 18,028.5 burden hours [101 registrants x 178.5 hours per registrant].

Orderly Liquidation NPRM (OMB Control Number 3038-0083):

Orderly Liquidation Termination Notice Provision.

Number of registrants: 101.

Frequency of collection: At least once per counterparty.

Estimated number of annual responses per registrant: 540 [one per counterparty].

Estimated aggregate number of annual responses: 54,540 [101 registrants × 540 counterparties].

Estimated annual hour burden per registrant: 270 [540 counterparties × .5 hours per counterparty].⁹

Estimated aggregate annual hour burden: 27,270 [101 registrants × 270 hours per registrant].

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.**

⁹*Id.*

- **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.**

As discussed above, the amendments to the Commission's regulations implemented by the Final Rule would not impose any new collection requirements on market participants. Accordingly, the information collections required by the amendments to the Commission's regulations would 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 101 SD and MSP registrants 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 regulations did 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.**

The Commission has revised its estimate because the amendments that are being made to the Commission's regulations will slightly reduce the burden on SDs, MSPs, and their counterparties.

- 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

Part 23 – Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants

OMB CONTROL NUMBER 3038-0068

Confirmation NPRM:

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	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 ¹⁰	Estimated Aggregate Annual Cost ¹¹
Recordkeeping : Drafting & Updating Policies and Procedures	101	Initial implementation, updating as needed	1	101	40 hours	40 hours	4,040 hours	\$4,000 [40 hours x \$100]	\$404,000 [101 x \$4,000]
Recordkeeping : Acknowledgement and Confirmation	101	Daily	252	25,452	1 hour	252 hours	25,452 hours	\$25,200 [252 hours x \$100]	\$2,545,200 [101 x \$25,200]
Recordkeeping : Portfolio Reconciliation	101	Daily, weekly, quarterly, or annually	8,120	820,120	.099 hours	804 hours	81,204 hours	\$80,400 [804 hours x \$100]	\$8,120,400 [101 x \$80,400]
Recordkeeping : Portfolio Compression	101	As needed	1,029	103,929	.17 hours	178.5 hours	18,028.5 hours	\$17,850 [178.5 hours x \$100]	\$1,802,850 [101 x \$17,850]

¹⁰ For purposes of these cost estimates, an hourly wage rate of \$100 was used. Thus, the figures in this column reflect the “Estimated Annual Hour Burden Per Registrant” multiplied by \$100.

¹¹ The figures in this column reflect the “Estimated Number of Registrants Per Year” multiplied by the “Estimated Annual Cost Per Registrant.”

Orderly Liquidation NPRM (OMB Control Number 3038-0083):

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	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 ¹²	Estimated Aggregate Annual Cost ¹³
Recordkeeping: Orderly Liquidation Termination Notice Provision	101	At least once per counterparty	540	54,540	.50 hours	270 hours	27,270 hours	\$27,000 [270 hours x \$100]	\$2,727,000 [101 x \$27,000]

¹² For purposes of these cost estimates, an hourly wage rate of \$100 was used. Thus, the figures in this column reflect the “Estimated Annual Hour Burden Per Registrant” multiplied by \$100.

¹³ The figures in this column reflect the “Estimated Number of Registrants Per Year” multiplied by the “Estimated Annual Cost Per Registrant.”