

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

Clearing Exemption for Swaps Between Certain Affiliated Entities

OMB CONTROL NUMBER 3038-0104

Rule 50.52 (Exemption for Swaps Between Affiliates)

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 2(h)(1)(A) of the Commodity Exchange Act (“CEA”) makes it unlawful for any person to engage in a swap if the Commodity Futures Trading Commission (“Commission”) determines such swap is required to be cleared, unless that person submits the swap for clearing to a registered derivatives clearing organization. 7 U.S.C. 2(h)(1)(A). By exercising its general exemptive authority in CEA section 4(c)(1), on April 1, 2013, the Commission adopted a final rule exempting from the statutory clearing requirement swap transactions between certain affiliated entities within a corporate group (“inter-affiliate swaps”), subject to certain conditions.¹ 7 U.S.C. 6(c). Commission regulation 50.52 contains an elective exemption for qualifying counterparties and outlines the conditions entities must satisfy in order to rely upon it. These conditions are designed and are necessary to address Commission concerns regarding inter-affiliate swap risk and to provide the Commission with information necessary to regulate swaps markets.

Among the conditions of the exemption is a notification and reporting requirement. By electing the exemption, affiliated entities, known as “eligible affiliate counterparties” will be transacting uncleared swaps, transactions that CEA section 4r requires be reported to a swap data repository (“SDR”), or to the Commission if no SDR will accept such information. 7 U.S.C. 6r. Commission regulation 50.52(c) implements the reporting requirement in CEA section 4r for these uncleared inter-affiliate swaps and specifies the exact information that must be reported. CEA section 2(j) further requires a counterparty that is an issuer of securities under section 12 of the Securities Exchange Act of 1934 (“Exchange Act”) or that is required to file reports under

¹ Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750 (Apr. 11, 2013). In addition, the Commission notes also that other elective exceptions to the clearing requirement are created and contemplated by the CEA, as amended by the Dodd-Frank Act. *See, e.g.*, CEA sections 2(h)(7)(A) (clearing exception for non-financial entities, commonly known as the “end-user exception”), 2(h)(7)(D) (extension of the end-user exception to qualifying affiliates), and 2(h)(7)(C)(iii) (requiring the Commission to consider whether to exempt certain small banks, savings associations, farm credit institutions, and credit unions from the clearing requirement). The Commission has issued a final rule addressing the end-user exception, including a provision for certain small credit institutions. *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 44441 (July 19, 2012) (final rule).

Exchange Act section 15(d) (collectively, “SEC Filers”) electing the end-user exception to first have an appropriate committee of the issuer’s board or governing body review and approve its decision to enter into those uncleared swaps. 7 U.S.C. 2(j). Commission regulation 50.52(c)(3) extends the CEA section 2(j) requirement to SEC Filers electing the exemption for swaps between affiliated entities by collecting information necessary to satisfy that requirement. Additionally, Commission regulation 50.52(d) allows counterparties to submit some information, including the information required by CEA section 2(j), on an annual basis, as opposed to submitting identical information with each qualifying inter-affiliate swap.

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.

Since the Commission adopted Commission regulation 50.52 in 2013, the data requested under this collection of information has been collected by SDRs. The Commission has used the data to monitor use of the exemption by eligible affiliate counterparties, to analyze the risk characteristics of uncleared swaps generally, and to enhance the Commission’s ability to identify and reduce potential systemic risk.

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 Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. The information required under this collection may be submitted electronically to an SDR. The Commission understands that 100% of the information reported pursuant to this collection of information is 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 available from 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.

This collection of information will not have a significant impact on a substantial number of 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.

If the information required under this collection of information were not collected or was conducted less frequently, then the Commission’s ability to monitor and enforce the conditions

set forth in the exemption would be hindered. The Commission would be unable to ensure that only eligible affiliate counterparties meeting the specified conditions elect the exemption, and the Commission's ability to evaluate the risks of, and monitor the use of uncleared inter-affiliate swaps would be hindered. In addition, failure to obtain the subject information would adversely affect the Commission's ability to ensure the counterparties' compliance with their obligations under the CEA and Commission regulations related to the clearing requirement. The integrity and efficiency of the swap markets would be adversely affected because the information collection allows counterparties to elect an exemption for certain swaps from the clearing requirement. The information collection cannot be conducted less frequently without compromising the accuracy and timeliness of the data.

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 reporting counterparty must report the information required in Commission regulation 50.52(c)(1) for each swap. It also must report the information required in Commission regulation 50.52(c)(2)-(3) for each swap if no annual report had been filed. However, the Commission has given respondents the option to report the same information on an annual basis instead. The Commission understands that 100% of the entities electing the inter-affiliate exemption report annually.

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

The reporting counterparty must report the information required in Commission regulation 50.52(c)(1) for each swap. It also must report the information required in Commission regulation 50.52(c)(2)-(3) for each swap if no annual report has been filed. However, the Commission has given respondents the option to report the same information on an annual basis instead. The Commission understands that 100% of the entities electing the inter-affiliate exemption report annually.

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

The exemption does not impose any requirements that obligate an applicant 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 exemption does not impose any 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 exemption 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;**

The exemption does 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**

The exemption does 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.**

The exemption does not specifically require any person to submit data involving confidential information or trade secrets. In any event, the Commission has promulgated regulations to protect the confidentiality of the information collected from respondents. They 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 (Agency Information Collection Activities: Notice of Intent to Extend Collection 3038-0104: Clearing Exemption for Swaps Between Certain Affiliated Entities, 84 FR 16662 (Apr. 22, 2019)) is attached. The Commission did not receive any comments on the 60-day Federal Register notice.

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.

During 2017 and 2018 Commission staff reviewed and discussed the format of the end-user exception reporting forms used by one of the Commission's provisionally-registered SDRs with relevant staff from that SDR. Commission staff made efforts to clarify the instructions and requested information on the end-user exception reporting form, as well as to confirm that the instructions and reporting format on the inter-affiliate exemption forms did not require updating.

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.

In 2017, Commission staff communicated with representatives from one of the provisionally-registered SDRs responsible for collecting, compiling, and organizing the reported information.

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 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 inter-affiliate exemption does not require any persons to report 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 Commission estimates that approximately 310 respondents file a total of 310 responses annually. The estimated average number of hours required to report each annual report is 1 hour. The cost of the hourly burden per annual report is estimated to be \$60.40.

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.**

To the extent that the collection is being renewed, the Commission believes that capital and start-up costs have already been incurred and the additional technological infrastructure

required to satisfy the reporting responsibility will be minimal. Commission regulation 50.52 requires the reporting counterparty to report specified information to a registered SDR either on an annual basis or each time a swap relying on the inter-affiliate exemption is entered into. The Commission understands that all reporting counterparties file this report on an annual basis. The Commission understands that this report is filed by relatively simple means, by accessing a pdf form on a website and providing basic information.

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 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.

Commission staff developed and updated its new estimates using information available from one of the Commission's provisionally-registered SDRs that is more commonly used to report uncleared swaps. In the past, Commission staff had obtained data from two provisionally-registered SDRs to estimate the number of respondents who provide the information subject to this collection. One of the SDRs that had provided data in the past recently withdrew its registration with the Commission and Commission staff did not include its data in this estimate.

Commission staff notes that the average number of counterparties filing the inter-affiliate exemption annual form has increased over the previous three years compared to the average number of counterparties that filed the form in 2014-2015. Commission staff reviewed the number of counterparties that submitted an annual form to DTCC Data Repository (U.S.) LLC during calendar year 2016, 2017, and 2018. Commission staff calculated the average number of filers over those three calendar years to produce an estimated number of respondents to this collection of information. The number of respondents increased significantly in the past three years, which could be explained by a rise in the number of counterparties electing the inter-affiliate exemption after the Commission expanded the scope of swaps included under its clearing requirement in 2016.²

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

² Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps. 81 FR 71202 (Oct. 14, 2016). The Commission expanded the clearing requirement to include certain interest rate swaps denominated in nine additional currencies. This expansion could have increased the number of inter-affiliate swaps that were subject to the Commission's clearing requirement and would therefore be expected to increase the number of counterparties electing the inter-affiliate exemption.

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

Rule 50.52 (Exemption for Swaps Between Affiliates)

OMB Collection File 3038-0104

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Regulation(s)	Estimated Number of Respondents	Estimated Number of Reports by Each Respondent	Estimated Average Number of Burden Hours per Response	Annual Number of Burden Hours per Respondent (3 x 4)	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	Total Annual Burden Hour Cost of All Responses (6 x 9)
50.52(c)-(d)	310 ³	1	1	1	\$60.40 ⁴	\$60.40	310	310	\$18,724

³ 75 is the average number of annual reports filed pursuant to rule 50.52 during 2014 and 2015. The Commission is not aware of any reports filed on a swap-by-swap basis.

⁴ 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 2,000 annual working hours to arrive at the hourly rate of \$60.40.