

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-XXXX

“Exemption from Derivatives Clearing Organization Registration”

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.

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CEA to, among other things, establish a comprehensive statutory framework for the execution and clearing of swaps. Section 5b(a) of the CEA, as amended by the Dodd-Frank Act, provides that a clearing organization may not perform the functions of a derivatives clearing organization (“DCO”) with respect to swaps unless the clearing organization is registered with the Commission. Section 5b(h) of the Commodity Exchange Act (“CEA”), however, permits the Commission to conditionally or unconditionally exempt a clearing organization from registration as a DCO for the clearing of swaps if the Commission determines that the clearing organization is subject to “comparable, comprehensive supervision and regulation” by the clearing organization’s home country government regulator.

This Supporting Statement relates specifically to the Commission’s proposed regulations that would codify the policies and procedures that the Commission is currently following with respect to granting exemptions from registration as a DCO.¹ The Commission is issuing a supplemental proposal to permit DCOs that are exempt from registration (exempt DCOs) to clear swaps for U.S. customers. The proposed rules include reporting requirements that are collections of information requiring approval under the PRA. Specifically, the proposal would amend Part 39 to specify the conditions and procedures under which a clearing organization may apply for exemption from registration as a DCO, the information that must be provided to the Commission to obtain and maintain such exemption, procedures for termination of an exemption, and requirements for customer clearing. The proposed rules also include a requirement that affects the existing information collection for part 45 of the Commission’s regulations, which is addressed in a supporting statement for the applicable information collection.²

The information that would be collected under these proposed regulations is necessary for the Commission to determine whether a clearing organization qualifies for exemption from DCO registration, to evaluate the continued eligibility of the exempt DCO for exemption from registration, to review compliance by the exempt DCO with any

¹ See Exemption From Derivatives Clearing Organization Registration, 83 FR 39923 (Aug. 13, 2018), and Notice of supplemental proposal, 84 FR 34819 (July 19, 2019).

² Information Collection 3038-0096. The supplemental proposal does not affect the information that was included in the Supporting Statement submitted to OMB in August 2018.

conditions of such exemption, to conduct its oversight of U.S. persons and the swaps that are cleared by U.S. persons through the exempt DCO, or to assess the exempt DCO's U.S. clearing activity for purposes of determining that it does not pose substantial risk to the U.S. financial system.

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.

Further to the purposes discussed in the response to Question 1 above, the information specified in the proposed regulations would be collected pursuant to proposed Regulation 39.6(e) in the application process for exemption from DCO registration, and would be evaluated by Commission staff to determine whether initial eligibility requirements and any other applicable conditions are satisfied. The conditions of exemption specified in proposed Regulations 39.6(b)(7) and (8) would require annual certification of the exempt DCO's continued compliance with the Principles for Financial Market Infrastructures ("PFMIs") and good regulatory standing. Proposed Regulation 39.6(c) sets forth general reporting requirements pursuant to which an exempt DCO would be required to provide certain information directly to the Commission: (1) on a periodic basis (daily or quarterly); (2) after the occurrence of a specified event; and (3) upon request by the Commission. Daily reports required by the proposed regulations would include specified margin information for all clearing members, for U.S. clearing members, and for the accounts of U.S. persons. These reports would provide the Commission with information regarding the cash flows associated with U.S. persons clearing swaps through exempt DCOs in order to analyze the risks presented by such U.S. persons and to assess the extent to which U.S. business is being cleared by each exempt DCO. Quarterly reporting would include a list of U.S. persons and futures commission merchants ("FCMs") that are either clearing members or affiliates of any clearing member, with respect to the clearing of swaps, as of the last day of the fiscal quarter. Proposed Regulation 39.6(b)(2) would require an exempt DCO to have rules that require a foreign intermediary to provide written notice to, and obtain acknowledgement from, a U.S. person, prior to clearing any swaps for such person, that the clearing member is not a registered FCM, the exempt DCO is exempt from registration with the Commission, and the protections of the Bankruptcy Code, as defined in § 190.01 of the Commission's regulations, do not apply to the U.S. person's funds. The letter must explicitly compare the protections available to the U.S. person under U.S. law and the exempt derivatives clearing organization's home country regulatory regime.

Information that would be required by these proposed regulations may be used by the Commission, among other things, for the purposes of evaluating the continued eligibility of the exempt DCO for exemption, reviewing the exempt DCO's compliance with any conditions of its exemption, or conducting oversight of U.S. persons and the swaps that are cleared by U.S. persons through the exempt DCO. Information regarding requests for termination of exemption and notice to clearing participants of such termination would be required by proposed Regulations 39.6(g) and (h), respectively. This information would be used by the Commission to determine whether the exempt DCO meets criteria for

termination and that the swap positions and collateral of U.S. participants are handled appropriately.

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 information required by this collection is required to be filed 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.

To the maximum extent possible, the information collection was designed to avoid duplication. In all cases where it was possible to leverage information collections contained in other rulemakings, the Commission elected not to impose collections that would increase burden. The required information 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. Each different type of information is needed given the purposes for which the data will be used, stated above in Questions 1 and 2.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-1), describe the methods used to minimize burden.

The required information does not involve any small businesses or other 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 collections were conducted less frequently, the Commission would not have sufficient information to ascertain whether exempt DCOs are in compliance with the conditions of their exemption from DCO registration, including certain obligations with respect to U.S. persons clearing swaps, or whether exempt DCOs pose substantial risk to the U.S. financial system.

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 proposed rules would require daily reporting of certain margin data for the swap positions of U.S. persons. The purpose of this reporting is for the Commission to receive information regarding the cash flows associated with the

clearing of swaps by U.S. persons through exempt DCOs in order to assist the Commission in analyzing the risks presented by such U.S. persons and in assessing the extent of U.S. business that is being cleared by each exempt DCO.

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

In order for the Commission to assess adequately whether an exempt DCO is in compliance with the terms and conditions of its exemption or applicable Commission regulations, an exempt DCO might be required to prepare a written response to a collection of information in fewer than 30 days, depending on the exigency of the situation.

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

Only single copies of documents are required.

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

The proposal does not specifically impose any recordkeeping requirement. However, Commission Regulation 1.31(b) 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 and records exclusively created and maintained on paper, 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 in the proposed regulations.

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

The proposed requirements do not involve the use of 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 an unsupportable 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.

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.

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.

The Commission is publishing a notice of proposed rulemaking (NPRM) in the *Federal Register*. The NPRM includes a request for comment on all aspects of the proposed regulations, as well as requests for comment on several specific provisions and issues (including all aspects of the proposed information collection requirements). The NPRM will also notify the public and other federal agencies that the Commission will submit an information collection request.³

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.

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. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which

³ See 84 FR 35456, July 23, 2019.

strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, 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.

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.

The Commission issued orders of exemption to four clearing organizations in 2015, based on the same criteria and conditions as contained in the proposed regulations. Currently, three petitions for exemption are pending. Based on its experience in addressing petitions for exemption during the past four years, the Commission anticipates receiving one application for exemption per year. Burden hours and costs were estimated

based on the existing information collection for DCO registration and reporting,⁴ adjusted to reflect the significantly lower burden of the proposed regulations. See Attachment A.

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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 costs associated with the proposed regulations are provided in the responses to questions 12 and 14. No initial/startup costs are anticipated.

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 primary cost to the federal government will be the salaries and benefits for staff to process the exemption applications received; and to periodically review reports, disclosures, and records for compliance with the conditions of exemption. It is

⁴ OMB Control No. 3038-0076.

anticipated that these costs will translate into five Commission employees at the CT-14 level, who will spend approximately 5% of their time performing these tasks. At an estimated salary cost of \$83 per hour per employee,⁵ the costs to the government will be approximately \$43,160.

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

The proposal by the Commission would amend part 39 of its regulations (Part 39) to establish a regulatory framework within which the Commission may exempt a clearing organization organized outside of the United States from registration as a DCO in connection with the clearing organization's clearing of swaps. The proposal sets forth new reporting requirements pursuant to an application process for the exemption from DCO registration. Also, the cost to the federal government has increased slightly due to salary increases for Commission staff.

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.

⁵ Five employees x [.05 x 2,080 hours per year] x \$83 per hour = \$43,160. This figure is based on an average of CT-14 salaries for employees in Washington, DC and Chicago based on the Commission's CFTC 2018 Pay Chart (with adjusted locality pay). This figure does not include employee benefits.

Attachment A

Figures in the table below reflect the burden of new information collection requirements based on the Commission's proposed regulations for exempt DCOs.

	1	2	3	4	5	6	7	8	9
	Estimated # of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours Per Response	Est. Annual No. of Burden Hours Per Respondent (2x4)	Est. Avg. Burden Hour Cost	Est. Avg. Burden Cost Per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
Reporting									
Exempt DCO application, including all exhibits, supplements and amendments - 39.6(e)(2)	1	1	1	40	40	\$250 ⁶	\$10,000	40	\$10,000
Termination of exemption by Commission-39.6(f) or on request-39.6(g)	1	0.33	0.33	2	0.66	\$250	\$165	0.66	\$165
Notice to clearing members re: termination of exemption - 39.6(h)	1	10.33	10.33	0.1	1.033	\$250	\$258	1.033	\$258
Daily reporting-39.6(c)(2)(i)	7	250 ⁷	1750	0.1	25	\$46 ⁸	\$1150	175	\$8050

⁶ In the Commission's experience, exempt DCO applicants often hire outside counsel to prepare and submit their applications, and exempt DCOs may engage outside counsel to assist with their continued compliance with conditions of exemption, including annual certifications. 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 calculation for estimates other than daily, quarterly and event-specific reporting uses \$250, which is consistent with the figure used in the existing burden estimates for DCO registration applications.

⁷ Indicates the approximate number of trading days in the fiscal year.

⁸ The dollar estimate uses \$46, the Bureau of Labor Statistics mean hourly rate for category 13-2099, Financial Specialist, as of May 2018.

	1	2	3	4	5	6	7	8	9
	Estimated # of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours Per Response	Est. Annual No. of Burden Hours Per Respondent (2x4)	Est. Avg. Burden Hour Cost	Est. Avg. Burden Cost Per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
Reporting									
Quarterly reporting- 39.6(c)(2)(ii)	7	4	28	1	4	\$57 ⁹	\$228	28	\$1,596
Event-specific reporting- 39.6(c)(2)(iii)-(viii) and 39.6(b)(4)(iii)	4	1	4	0.5	0.5	\$96 ¹⁰	\$48	2	\$192
Annual certification (PFMI compliance and good standing w/home country regulator) - 39.6(b)(7) and (8)	7	1	7	1.5	1.5	\$250	\$375	10.5	\$2,625
Subtotal, DCO Exemption - Reporting¹¹	9	267.66	1800.66	45.2	73		\$12,224	257.2	\$22,886
Third-party reporting									
Clearing members providing notice to unaffiliated U.S. persons - 39.6(b)(2)	217	10	2170	0.2	2	\$76 ¹²	\$152	434	\$32,984

⁹ This dollar estimate uses \$57, the Bureau of Labor Statistics mean hourly rate for category 13-0000, Business and Financial Operations, as of May 2018.

¹⁰ This dollar estimate uses \$96, the Bureau of Labor Statistics mean hourly rate for category 23-1011, Lawyers, as of May 2018.

¹¹ Subtotal of respondents includes 1 DCO applicant, 1 termination of exemption every three years, and 7 exempt DCOs (four existing exempt DCOs plus one new exempt DCO each of the next three years).

¹² The hour burden cost is estimated at \$76 based on a weighted average of 60% of the Bureau of Labor Statistics mean hourly wage as of May 2018 of \$96.26 for 23-1011, Lawyers, and 40% of the mean hourly wage of \$45.73 for 13-2099, Financial Specialists.

	1	2	3	4	5	6	7	8	9
	Estimated # of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours Per Response	Est. Annual No. of Burden Hours Per Respondent (2x4)	Est. Avg. Burden Hour Cost	Est. Avg. Burden Cost Per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
Reporting									
Total, All Proposed Requirements	226	278	3971	45.4	75		\$12,376	691	\$52,870