

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0086

Swap Data Repositories: Registration and Regulatory Requirements

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 21 of the Commodity Exchange Act (“CEA”) requires that the Commission establish certain standards for the registration and governance (“SDRs”), including regulations regarding SDRs reporting data to the Commission and to the public. The Commission established these regulations in Part 49 of the Commission’s regulations.

The Commission is proposing amendments to Part 49 to streamline reporting requirements and clarify and update certain provisions. The Commission is proposing to amend Information Collection 3038-0086 to account for any additions and revisions. Most information collections discussed in existing Information Collection 3038-0086 would not be impacted by the proposed revisions, and the Commission is not proposing to revise the estimated burdens associated with those collections.

The Commission is proposing amendments to Part 49 of the Commission’s regulations in order to improve the quality of swap data and to streamline regulatory requirements governing data reporting. The proposed modified collections would affect SDRs that collect swap data for the Commission to perform its regulatory duties of risk monitoring and ensuring compliance with its rules, among other things. The information proposed to be sent to the Commission would be necessary for the Commission to ensure that SDR data is stored and sent to the Commission properly when an SDR withdraws its registration. In addition, the information sent to SEFs, DCMs, and reporting counterparties by SDRs is necessary as it would enable these entities to ensure they have reported SDR data to SDRs in accordance with the Commission’s regulations. Without accurate reporting of SDR data as set forth in the Commission’s regulations, the Commission would be unable to fulfill its regulatory mandate of monitoring systemic risk.

The Commission is proposing to add or modify information collections for the following regulations:

- Regulation 49.4(a)(1)(iv) requires that a request to withdraw specify, among other items, a statement that the custodial SDR is authorized to make such data and records available in accordance with § 1.44. The Commission is proposing to remove this requirement from 49.4.

- Regulation 49.4(a)(2) requires that prior to filing a request to withdraw, a registered SDR shall file an amended Form SDR to update any inaccurate information. The proposal would eliminate the requirement for SDRs to file an amended Form SDR prior to filing a request to withdraw.
- The Commission is proposing new § 49.4(a)(2) to require SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the Commission.
- Regulation 49.10(a) requires SDRs to accept and promptly record all swap data. The Commission is proposing to amend § 49.10(a) to further specify that SDRs must send validation acceptance and rejection messages to SEFs, DCMs, and reporting counterparties after validating SDR data.

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.

The information sent to the Commission in proposed § 49.4 would be necessary for the Commission to ensure that SDR data is stored and sent to the Commission properly when an SDR withdraws its registration. The information sent to SEFs, DCMs, reporting counterparties, and third-party service providers by SDRs as required by proposed § 49.10 would be used by these entities to ensure they have reported SDR data to SDRs in accordance with the Commission's regulations.

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.

All of the current and proposed information collections within Information Collection 3038-0086 involve the use of electronic collection protocols. All required data submissions to the Commission must be electronic.

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 collected pursuant to Part 49 of the Commission's regulations is not already collected by the Commission or other regulator for any other purpose and is not publicly available through another 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.

This collection of information would not involve any small business or other small entities. The Commission has previously established that the SDRs that would be affected by this collection are 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.

Without accurate reporting of SDR data as set forth in the Commission's regulations, the Commission would be unable to fulfill its regulatory mandate of monitoring systemic risk.

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;**

SDR withdrawals are not a regular or common occurrence. However, SDR validation of swap data, and the associated rejection and acceptance messages proposed § 49.10 would require SDRs to send entities submitting data, would be more often than quarterly.

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

This does not apply.

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

Not applicable, respondents are not required 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 proposed amendments to Part 49 would not modify Information Collection 3038-0086 in regards to 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;**

Not applicable, the proposed collection is not connected or related to any statistical survey.

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

Not applicable, the proposed collection does not 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**

Not applicable, the proposed collection does not include any pledges of confidentiality that are not supported by authority established in statute or regulation.

- **The collection does not involve any 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.**

All current and proposed requirements to submit proprietary or other confidential information are subject to the Commission's existing statutory, regulatory, and procedural requirements to protect the confidentiality of such information. This includes the requirements of sections 8(a) and 21(c)(6) of the Act as well as in §§ 43.4, 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's 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 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.**

The Commission seeks public comment on any aspect of the proposed amendments to this collection of information in the proposing release for this proposed rulemaking.

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

Not applicable, no payment or gift will be provided to respondents.

- 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. All current and proposed requirements to submit proprietary or other confidential information are subject to the Commission's existing statutory, regulatory, and procedural requirements to protect the confidentiality of such information. This includes the requirements of sections 8(a) and 21(c)(6) of the Act as well as in §§ 43.4, 49.16, 49.17, and 49.18, and parts 145 and 147 of the Commission's 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.**

Not applicable, the collection does not involve any questions of a sensitive nature, as the term is used in this question.

- 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.**

Please see Attachment A for the estimated hour burden adjustments to the collections of information discussed in this supporting statement.

As an initial matter, the Commission has proposed amendments to regulations that would impact the collections of information under OMB 3038-0086 (Certain Swap Data Repository and Data Reporting Requirements, 84 Fed. Reg. 21044, May 13, 2019) (the “May 2019 release”). The Commission has re-opened the comment period for that proposal to align with the comment period for the proposal accompanying this supporting statement (the “February 2020 release”). The February 2020 release proposes additional amendments to regulations that would impact the collections of information under OMB 3038-0086.

The two rulemakings are related: the May 2019 release proposes amendments to most of the regulations in part 49 and creates new regulations in part 49, while the February 2020 release proposes amendments to § 49.4 and § 49.10. Commenters will be able to comment on both

releases at the same time so they can comment on all of the amendments to the part 49 regulations proposed in both releases. The Commission intends to finalize the rulemakings together.

In the February 2020 release, the Commission is not proposing any amendments to the regulations in part 49 outside of the proposed amendments to § 49.4 and § 49.10 in the February 2020 release. Since the Commission is not proposing to amend the majority of the collections of information in OMB 3038-0086 in the February 2020 release, Attachment A shows only the adjustment to the burden estimates for OMB 3038-0086 proposed in the May 2019 release resulting from the proposed amendments to § 49.4 and § 49.10 in the February 2020 release.

In other words, since the February 2020 release proposes further amendments to part 49 to those proposed in the May 2019 release, Attachment A will only show the changes to OMB 3038-0086 resulting from the February 2020 release. As shown in Attachment A, the Commission estimates the proposed amendments to § 49.4 and § 49.10 would result in an additional 9,000,001 responses added to the total number of responses, and an additional 4,990 burden hours with a total additional cost of \$360,427 to OMB 3038-0086. More detail regarding the burden estimates for each regulatory requirement affected by the proposal is provided below.

In calculating this cost estimate, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics ("BLS"). Commission staff arrived at an hourly rate of \$72.23 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2018) multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): "computer programmer – industry: securities, commodity contracts, and other financial investment and related activities" (50% weight); "compliance officer – industry: securities, commodity contracts, and other financial investment and related activities" (25%); and "lawyer – legal services" (25%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

- Regulation 49.4(a)(1)(iv) currently requires that a request to withdraw from SDR registration specify, among other items, a statement that the custodial SDR is authorized to make such data and records available in accordance with § 1.44. The Commission is proposing to remove this requirement from 49.4(a)(1)(iv).
- Regulation 49.4(a)(2) requires that prior to filing a request to withdraw, a registered SDR shall file an amended Form SDR to update any inaccurate information. The proposal would eliminate the requirement for SDRs to file an amended Form SDR prior to filing a request to withdraw.
- Separately, the Commission is proposing new § 49.4(a)(2) to require SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the Commission. The Commission had not previously provided a burden estimate for § 49.4. While the Commission is

proposing to amend § 49.4 to remove the requirement to file a Form SDR upon withdrawal from registration, the Commission is also proposing to require SDRs to execute custodial agreements with the SDR to which they would be transferring all of their data. This would result in no net change to the number of reports SDRs are required to file pursuant to § 49.4 (1 report). However, the Commission is now adding an estimate for § 49.4, because it had not done so before. The Commission is estimating that 1 SDR would file a report pursuant to § 49.4, at an estimated 40 hours per report for a total cost of \$2,889.20 to the SDR.

- Regulation 49.10(a) requires SDRs to accept and promptly record all swap data. The proposal would further specify that SDRs must send validation acceptance and rejection messages after validating SDR data. The Commission had previously estimated the burden for § 49.10 as follows: 3 SDRs each annually report 2,652,000 reports at an estimated .00055 hours per report, for a total burden estimate of 7,956,000 responses at 4,419 hours, and \$319,184 total costs. The Commission is updating this estimate to account for the proposal requiring SDRs to submit new acceptance and rejection messages. The Commission estimates SDRs will each be required to report an additional 3,000,000 messages from the new requirement to submit acceptance and validation messages. The 3,000,000 additional messages for each SDR will add an additional 4,950 burden hours at a cost of \$357,538.50 to the current estimate for § 49.10.¹

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.**

¹ The Commission erroneously characterized this in the preamble to the proposed regulations and is anticipating correcting the error in the final rule.

- **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 proposed amendments to § 49.10 would require SDRs to send validation acceptance and rejection messages after validating SDR data. This would create costs for SDRs to update systems for sending these messages. The Commission estimates that SDRs would incur a one-time initial burden of 100 hours per entity to modify their systems to adopt the changes described below, for a total estimated hours burden of 300 hours, at a total cost of \$21,669 across the SDRs (based on a labor cost of \$72.23). The Commission additionally estimates 100 hours per entity annually to perform any needed maintenance or adjustments to reporting systems, for a total estimated hours burden of 300 hours, at a total cost of \$21,669 across the SDRs.

The total capital/start-up costs for amended § 49.10 are shown in Attachment B.

- 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 Commission does not anticipate that the proposed changes will require additional staff time or technology resources beyond what is already dedicated to this collection, as discussed in previous filings related to Information Collection 3038-0086.

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

The Commission is proposing amendments to Part 49 of the Commission's regulations in order to improve the quality of swap data and to streamline regulatory requirements governing data reporting. This supporting statement discusses adjustments to burden hours calculations for Information Collection 3038-0086 to account for modified and new burdens associated with the proposed changes to the regulation.

- 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.**

Not applicable, the results of this collection of information are not planned to be published for statistical use.

- 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.**

Not applicable, the Commission is not seeking such approval for this publication.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Not applicable, there are no exceptions.

Attachment A

OMB Control Number 3038-0086

Swap Data Repositories: Registration and Regulatory Requirements

Reporting Burden

| 1. Regulation(s) | 2. Estimated Number of Respondents | 3. Estimated Number of Reports by Each Respondent | 4. Estimated Average Number of Burden Hours per Response | 5. Annual Number of Burden Hours per Respondent (3 x 4) | 6. Estimated Average Burden Hour Cost ² | 7. Total Average Hour Burden Cost Per Respondent (5 x 6) | 8. Total Annual Responses (2 x 3) | 9. Total Annual No. of Burden Hours (2 x 5) | 10. Total Annual Burden Hour Cost of All Responses (2 x 7) |
|--|------------------------------------|---|--|---|--|--|-----------------------------------|---|--|
| 49.4 – Withdrawal from Registration ³ | 1 | 1 | 40 | 40 | \$72.23 | \$2,889.20 | 1 | 40 | \$2,889.20 |
| 49.10 – Acceptance of Data ⁴ | 3 | 3,000,000 ⁵ | 0.00055 | 1,650 | \$72.23 | \$ 119,179.50 | 9,000,000 | 4,950 | \$ 357,538.50 |

² As described above in the answer to question 13, the Commission calculated the average wage rate to \$72.23.

³ The Commission has not previously provided a burden estimate for § 49.4. While the Commission is proposing to amend § 49.4 to remove the requirement to file a Form SDR upon withdrawal from registration, the Commission is also proposing to require SDRs to execute custodial agreements with the SDR to which they would be transferring all of their data. This would result in no net change to the number of reports SDRs are required to file pursuant to § 49.4 (1 report). However, the Commission is now adding an estimate for § 49.4, because it had not done so before. The Commission is estimating that 1 SDR would file a report pursuant to § 49.4, at an estimated 40 hours per report for a total cost of \$2,889.20 to the SDR.

⁴ The Commission had previously estimated the burden for § 49.10 as follows: 3 SDRs each annually report 2,652,000 reports at an estimated .00055 hours per report, for a total burden estimate of 7,956,000 responses at 4,419 hours, and \$319,184 total costs. Attachment A shows the changes to this estimate that would result from the changes proposed to § 49.10 in the February 2020 release.

⁵ The Commission estimates SDRs will each be required to report an additional 3,000,000 messages from the new requirement to submit acceptance and validation messages. The 3,000,000 additional messages for each SDR will add an additional 4,950 burden hours at a cost of \$357,538.50 to the current estimate for § 49.10, as shown in Attachment A.

| | | | | | | | | | |
|---|--|--|--|--|--|--|-----------|-------|---------------|
| Total Adjustment from Proposal ⁶ | | | | | | | 9,000,001 | 4,990 | \$ 360,427.70 |
|---|--|--|--|--|--|--|-----------|-------|---------------|

Attachment B

Capital/Start-Up Costs

| | |
|-------------------|-------------------------------|
| Regulation | Capital/Start-Up Costs |
| 49.10 | \$ 21,669 |

Operational/Maintenance Costs

| | |
|-------------------|--------------------------------------|
| Regulation | Operational/Maintenance Costs |
| 49.10 | \$ 21,669 |

⁶ The Commission is not proposing any amendments to the other regulations in part 49 in this NPRM outside of the proposed amendments to § 49.4 and § 49.10. Since the Commission is not proposing to amend the majority of the burden estimates for part 49 in this NPRM, the Commission is providing a total of the changes to the burden estimates resulting from the amendments to § 49.4 and § 49.10 proposed in the February 2020 release. See Item 12 above for further explanation.