

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

OMB CONTROL NUMBER 3038-0091

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 724(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-023, 124 stat. 1376, amended the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1 *et seq.*, to add, as section 4d(f) thereof, provisions concerning the protection of collateral provided by a Cleared Swaps Customer¹ to margin, guaranty, or secure a swap cleared by or through a derivatives clearing organization (“DCO”). For purposes of this supporting statement, the term “collateral” will be used to refer specifically to collateral subject to CEA section 4d(f) and the term “customer” will be used to refer specifically to customers involved in cleared swaps transactions. Broadly speaking, in cleared swaps transactions customers provide collateral to futures commission merchants (“FCMs”) through whom they clear their transactions. FCMs, in turn, may provide customer collateral to DCOs, through which FCMs clear transactions for their customers. In some circumstances one FCM (“Depositing FCM”) may provide customer collateral to another FCM (“Collecting FCM”) in connection with the process of clearing swaps transactions. If a customer defaults on an obligation arising out of a swap transaction the relevant FCM or DCO, in appropriate circumstances, may apply customer collateral to meet the defaulted obligation.

The requirements imposed by CEA section 4d(f) include:

1. The FCM must treat and deal with all collateral (including accruals thereon) deposited by a customer to margin its cleared swaps as belonging to such customer;
2. The FCM may not commingle such collateral with its own property and may not, with certain exceptions, use such collateral to margin the cleared swaps of any person other than the customer depositing such collateral;
3. A DCO may not hold or dispose of the collateral that an FCM receives from a customer to margin cleared swaps in any manner that would indicate that such collateral belonged to the FCM or any person other than the customer; and
4. The FCM and the DCO may only invest such collateral in enumerated investments

17 C.F.R. Part 22 is intended to implement CEA section 4d(f). Several of the sections of Part 22 require collections of information.

¹ For the definition of Cleared Swaps Customer, see Commission regulation 22.1. 17 CFR 22.1.

Section 22.2(g) requires each FCM with Cleared Swaps Customer Accounts² to compute daily the amount of Cleared Swaps Customer Collateral³ on deposit in Cleared Swaps Customer Accounts, the amount of such collateral required to be on deposit in such accounts and the amount of the FCM's residual financial interest in such accounts. The computations and supporting data must be kept in accordance with the Commodity Futures Trading Commission ("CFTC" or "Commission") regulation 1.31, which establishes generally applicable rules for recordkeeping under the CEA. The purpose of this collection of information is to help ensure that FCMs' Cleared Swaps Customer Accounts are in compliance at all times with statutory and regulatory requirements for such accounts.

Section 22.5(a) requires an FCM or DCO to obtain, from each depository with which it deposits cleared swaps customer funds,⁴ a letter acknowledging that such funds belong to the Cleared Swaps Customers of the FCM, and not the FCM itself or any other person. The purpose of this collection of information is to confirm that the depository understands its responsibilities with respect to protection of cleared swaps customer funds.

Section 22.11 requires each FCM that intermediates cleared swaps for customers on or subject to the rules of a DCO, whether directly as a clearing member or indirectly through a Collecting FCM, to provide the DCO or the Collecting FCM, as appropriate, with information sufficient to identify each customer of the FCM whose swaps are cleared by the FCM. Section 22.11 also requires the FCM, at least once daily, to provide the DCO or the Collecting FCM, as appropriate, with information sufficient to identify each customer's portfolio of rights and obligations arising out of cleared swaps intermediated by the FCM. The purpose of this collection of information is to facilitate risk management by DCOs and Collecting FCMs, and, in the event of default by the FCM, to enable DCOs and Collecting FCMs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

Section 22.12 requires that each Collecting FCM and DCO, on a daily basis, calculate, based on information received pursuant to section 22.11 and on information generated and used in the ordinary course of business by the Collecting FCM or DCO, and record certain information about the amount of collateral required for each Cleared Swaps Customer and the sum of these amounts. As with section 22.11, the purpose of this collection of information is to facilitate risk management by DCOs and Collecting FCMs, and, in the event of default by the FCM, to enable DCOs and Collecting FCMs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

Section 22.16 requires that each FCM who has Cleared Swaps Customers disclose to each of such customers the governing provisions, as established by DCO rules or customer agreements between collecting and depositing FCMs, relating to use of customer collateral, transfer, neutralization of the risks, or liquidation of cleared swaps in the event of a default by a

² *Id.*

³ *Id.*

⁴ Proposed section 22.5(c) provides an exception for a DCO serving as a depository where such DCO has made effective rules that provide for the segregation of Cleared Swaps Customer Collateral in accordance with all relevant provisions of the CEA and the regulations thereunder.

Depositing FCM relating to a Cleared Swaps Customer Account. The purpose of this collection of information is to ensure that Cleared Swaps Customers are informed of the procedures to which accounts containing their swaps collateral may be subject in the event of a default by their FCM.

Section 22.17 requires that each FCM produce a written notice of the reasons and the details concerning withdrawals from a Cleared Swaps Customers Account not for the benefit of Cleared Swap Customers if such withdrawal will exceed 25% of the FCMs residual interest in such account.

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 data required to be compiled and maintained pursuant to section 22.2(g) would be used by FCMs (and, in some instances, the CFTC and self-regulatory organizations) to help ensure that FCMs' Cleared Swaps Customer Accounts are in compliance at all times with statutory and regulatory requirements for such accounts.

The data required to be obtained and maintained pursuant to section 22.5(a) would be used by FCMs and DCOs (and, in some instances, the CFTC and self-regulatory organizations) to confirm that depositories of cleared swaps customer funds understand their responsibilities with respect to the protection of such funds.

The data required to be provided by FCMs to DCOs and Collecting FCMs pursuant to section 22.11 would be used by DCOs and Collecting FCMs to facilitate risk management, and, in the event of default by an FCM, to enable DCOs and Collecting FCMs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

The data required to be calculated and maintained pursuant to section 22.12 would be used by DCOs and Collecting FCMs to facilitate risk management, and, in the event of default by an FCM, to enable DCOs and Collecting FCMs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

The data required to be provided to customers pursuant to section 22.16 would be used by such customers to inform themselves of the procedures to which accounts containing their swaps collateral may be subject in the event of a default by their FCM.

The data required to be provided by FCMs to DCOs and Collecting FCMs (and, in some instances, the CFTC and self-regulatory organizations) pursuant to section 22.17 would be used by DCOs and Collecting FCMs to facilitate risk management, and, in the event of default by an FCM, to enable DCOs and Collecting FCMs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

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 collections of information required by sections 22.2(g), 22.11, and 22.12 and 22.17 may be conducted electronically. It is expected that this would be done using, with some modifications to software, information technology and systems already used by the relevant businesses.

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 collections of information do not duplicate any existing collection of information. No laws or regulations requiring similar collections of information involving the relevant entities currently exist.

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 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 collection of information required by section 22.2(g) were performed less frequently it would not effectively serve the function of helping to ensure that FCMs' Cleared Swaps Customer Accounts are in compliance at all times with statutory and regulatory requirements for such accounts. If the collections of information required by sections 22.11 and 22.12 were performed less frequently, they would not effectively serve the function of facilitating timely risk management by DCOs and Collecting FCMs and, in the event of default by an FCM, enabling DCOs and Collecting FCMs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis quickly enough to minimize market disruption and losses due to market volatility. If the collection of information required by section 22.5(a) were conducted less frequently, it would be less effective in helping to ensure that funds belonging to the Cleared Swaps Customers of FCMs are at all times held by depositories that understand their legal responsibilities with regard to such funds. If the collections of information required by sections 22.16 and 22.17 were conducted less frequently, they would be less effective in ensuring that Cleared Swaps Customers are informed of the procedures to which accounts containing their swaps collateral may be subject in the event of a default by their FCM.

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;**

Less frequent reporting and recordkeeping would not permit the Commission, or the self-regulatory organizations subject to its oversight, to adequately administer the CFTC's customer protection rules consistently with their purpose, which is supported fully by the CEA as amended, or monitor for compliance with the part 22 regulations that have been implemented consistently with the CEA, as amended.

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

Less frequent reporting and recordkeeping would not permit the Commission, or the self-regulatory organizations subject to its oversight, to adequately administer the CFTC's customer protection rules consistently with their purpose, which is supported fully by the CEA as amended, or monitor for compliance with the part 22 regulations that have been implemented consistently with the CEA, as amended.

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

Respondents are not required to submit more than an original and two copies of any documents to the Commission or third parties.

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

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the [CEA] or by [Commission] regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the five-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

- **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.

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

Not applicable.

- **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 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.**

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 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 collection (85 Fed. Reg. 43547, July 17, 2020) is attached. The Commission received no comments.

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.

Does not apply. The collections of information are ongoing collections that affected persons will need to perform in order to be able to comply with substantive regulatory obligations.

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

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 positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of a respondent’s data set forth in 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 regulations covered by this collection do not require the giving 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.

In light of the current number of Commission-registered FCMs and DCOs, the total number of respondents is estimated to be 78 (63 FCMs and 15 DCOs) and the aggregate hour

burdens set forth below are based upon that expectation. The burden hours are not anticipated to vary widely among respondents.

Based on the Commission's experience the recordkeeping and disclosure required by section 22.2(g) is expected to require about 100 hours annually per entity, for a total burden of approximately 6,300 hours. At an hourly rate of \$100 per hour (see below), the cost burden would be approximately \$10,000 per entity per year for a total of \$630,000. Also based on our experience the recordkeeping requirement of section 22.5 is expected to require about 5 hours per entity per year, for a total burden of approximately 315 hours per year. At an hourly rate of \$100 per hour, the cost burden would be approximately \$500 annually per entity, for a total of \$31,500. Similarly, based on experience the recordkeeping and disclosure required by section 22.17 is expected to require about 60 hours annually per entity, for a total burden of approximately 3,780 hours. At an hourly rate of \$100 per hour, the cost burden would be approximately \$6,000 per entity per year for a total of \$378,000.

The required disclosure in Section 22.16 would have to be made once each time a swaps customer begins to be cleared through a particular DCO or collecting FCM and each time a DCO or collecting FCM through which a customer's swaps are cleared changes its policies on the matters covered by the disclosure. It is expected that each disclosure would require about 0.2 hours of staff time by staff with an estimated salary of \$100 per hour. It is uncertain what average number of swaps customers FCMs will have, and what average number of disclosures will be required for each customer annually. Assuming an average of 500 customers per FCM and two disclosures per customer per year, the estimated total annual burden would be 200 hours and \$20,000 per entity, for an overall burden of \$1,260,000.

The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$100 per hour. The Commission believes that this is an appropriate salary estimate for purposes of this regulation.

In support of this determination, the Commission notes that the salary estimate is based upon May 2019 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States⁵, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage Industry," which is \$96.18; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$100.56; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$43.03. The Commission also notes that, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that some respondents may be large financial institutions whose employees' salaries may exceed the mean wage. The Commission recognizes that some respondents 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 respondents may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars

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

per hour. Any determination to use outside counsel, however, is at the discretion of the respondent.

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.**

The disclosure required by section 22.11 involves information that FCMs that intermediate swaps generate and use in the usual and customary ordinary course of their business. It is expected that the required disclosure will be performed using automated data systems that FCMs maintain and use in the usual and customary ordinary course of their business but that certain additional functionality will need to be added to these systems to perform the required disclosure. Because of the novel character of section 22.11, it is not possible to make a precise estimate of the paperwork burden. We estimate that the necessary modifications to, and maintenance of, systems may require approximately 20 hours of work annually at a salary of approximately \$100 per hour (as described above). It is expected that the required recordkeeping will be performed by approximately 63 entities. The total annual burden for section 22.11 therefore is estimated at 1,260 hours and \$126,000.

The recordkeeping required by section 22.12 involves information that Collecting FCMs and DCOs will receive pursuant to section 22.11 or that they generate and use in the usual and

customary ordinary course of their business. It is expected that the required recordkeeping will be performed using automated data systems that Collecting FCMs and DCOs maintain and use in the usual and customary ordinary course of their business but that certain additional functionality will need to be added to these systems to perform the required disclosure. Because of the novel character of section 22.12, it is not possible to make a precise estimate of the paperwork burden. We estimate that the necessary modifications to, and maintenance of, systems may require approximately 20 hours of work annually at a salary of approximately \$100 per hour. It is expected that the required recordkeeping will be performed by approximately 78 entities (63 FCMs and 15 DCOs). The total annual burden for section 22.11 therefore is estimated at 1,560 hours and \$156,000.

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 collection of information is not expected to impose significant annual costs on the Federal Government because it principally involves a requirement for certain private parties to keep records and make disclosures to other private parties with whom they do business.

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

The burdens have been adjusted to reflect the Commission's estimate of the current number of affected respondents.

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.

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.

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.

Does not apply.

Appendix A

OMB Collection File 3038-0091

ANNUAL ESTIMATED BURDENS

RECORDKEEPING BURDEN

Regulations (17 CFR)	Estimated number of entities	Estimated annual responses per entity	Total annual responses	Estimated number of hours per response	Estimated average cost per response	Total annual burden-hours	Total annual burden-cost
22.2(g)	63 (FCMs)	250	15,750	0.4	\$40	6,300	\$630,000
22.5(a)	78 (63 FCMs, 15 DCOs)	1	78	5	\$500	390	\$39,000
22.11	63 (FCMs)	250	15,750	0.08	\$8	1,260	\$126,000
22.12	78 (63 FCMs, 15 DCOs)	250	15,750	0.099	\$10	1,560	\$156,000
22.17	63 (FCMs)	60	3,780	1	\$100	3,780	\$378,000

THIRD-PARTY DISCLOSURE BURDEN

Regulations (17 CFR)	Estimated number of entities	Annual responses per entity	Total annual responses	Estimated number of hours per response	Estimated average cost per response	Total annual burden-hours	Total annual burden-cost
22.16	63 (FCMs)	1,000	63,000	0.2	\$20	12,600	\$1,260,000