

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Annual Report for Chief Compliance Officer of Registrants

OMB CONTROL NUMBER 3038-0080

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to add section 4s(k) (7 U.S.C. 6s(k)) which: (a) requires each swap dealer and major swap participant to designate an individual to serve as the entity's chief compliance officer; (b) imposes certain duties upon the chief compliance officer, including reviewing the compliance of the swap dealer or major swap participant with the CEA and relevant Commission regulations and establishing procedures for the handling, management, remediation, retesting and closing of noncompliance issues; and (c) requires the chief compliance officer to: (i) annually prepare and sign a report that contains a description of the swap dealer's or major swap participant's policies and procedures and its compliance with the CEA and Commission regulations; (ii) certify that the compliance report is accurate and complete; and (iii) file the compliance report with the Commission. Section 731 also directs the Commission to prescribe rules related to the annual report. Similarly, Section 732 of the Dodd-Frank Act amends section 4d of the CEA (7 U.S.C. 6d) to require a futures commission merchant to appoint a chief compliance officer and to authorize the Commission to promulgate regulations setting forth the duties and responsibilities of the chief compliance officer. The Commission has determined that it is appropriate and consistent with the intent of the Dodd-Frank Act to treat swap dealers, major swap participants, and futures commission merchants consistently with respect to their chief compliance officer obligations.

Accordingly, the Commission has adopted Regulation 3.3, requiring each swap dealer, major swap participant, and futures commission merchant to designate (by filing a form 8-R) a chief compliance officer who is responsible for developing and administering policies and procedures that fulfill certain duties of the swap dealer, major swap participant, or futures commission merchant and that are reasonably designed to ensure the registrant's compliance with the CEA and Commission regulations; establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer; establishing procedures for the handling, management response, remediation, retesting and closing of noncompliance issues; preparing, signing, certifying and filing with the Commission an annual compliance report that contains the information specified in the regulations; amending the annual report if material errors or omissions are identified; and maintaining records of the registrant's compliance policies and procedures and records related to the annual report.

The information collected pursuant to the regulations is essential to ensuring that swap dealers, major swap participants, and futures commission merchants maintain comprehensive policies and procedures that promote compliance with the CEA and Commission regulations.

- 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 required information will be used by Commission staff when conducting examination and oversight of swap dealers, major swap participants, and futures commission merchants for compliance with the CEA and Commission regulations. In particular, the information (i) informs the Commission of possible compliance weaknesses, (iii) assists the Commission in determining whether the registrant remains in compliance with the CEA and Commission regulations, and (iv) helps the Commission to assess whether the registrant has mechanisms in place to adequately address compliance problems that could lead to a failure of the registrant.

- 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 required information will 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.**

The Commission has attempted to eliminate duplication by: (a) permitting swap dealers, major swap participants, and futures commission merchants to incorporate by reference sections of an annual report that has been furnished to the Commission within the current or immediately preceding reporting period, (b) permitting registrants that are dually registered with the Commission and would be required to submit multiple annual reports, to incorporate by reference in the annual report filed in one registration capacity, sections of the annual report furnished within the current or immediately preceding reporting period that was filed in the other registration capacity, and (c) by permitting registrants that are affiliated with one or more other registrant(s), where each of the affiliated registrants must submit an annual report, to incorporate by reference in their annual report sections from an annual report prepared by any of their affiliated registrants furnished within the current or immediately preceding reporting period. .

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.

- 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.**

The collection of the required information does not involve any small businesses or small entities.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

The CEA, as amended by the Dodd-Frank Act, expressly requires the chief compliance officers of swap dealers and major swap participants to prepare, sign, certify and file a compliance report on an annual basis in accordance with regulations promulgated by the Commission. It also requires the Commission to promulgate regulations setting forth the duties and responsibilities of the chief compliance officer of futures commission merchants, which the Commission believes should be consistent with similar obligations imposed upon swap dealers and major swap participants. Accordingly, a less frequent collection would not comport with the Commission's obligations under its authorizing statute. Moreover, an annual report is necessary to ensure that the Commission receives, on a timely basis, the information needed to ensure that swap dealers, major swap participants, and futures commission merchants are in compliance with the CEA and relevant Commission regulations.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**

This question does not apply. The regulations involve obligations that are imposed on an annual basis (*e.g.*, the preparation and filing of the compliance report) or less than annually (*e.g.*, a Form 8-R need only be filed when the chief compliance officer is designated). More frequent reporting is required only where the affected registrant subsequently identifies material errors or omissions in a previously filed report.

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

This question does not apply.

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

This question does not apply. The regulations do not require the filing of multiple copies of documents.

- **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:

Commission Regulation 1.31 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;**

This question does not apply; the regulations do not require nor involve any statistical surveys.

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

This question does not apply. The regulations do not require nor involve the use of any statistical data classification.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

This question does not apply. The regulations do not require a pledge of confidentiality.

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The Commission has procedures to protect the confidentiality of a respondent's information. These are set forth in the Commission's regulations at part 145 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.**

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 published a *Notice of Intent to Extend Collection 3038-0080: Annual Report for Chief Compliance Officer of Registrants*. See 87 FR 24535 (April 26, 2022). The notice provided a 60-day period during which the public was invited to comment on the information col-

lection and the burdens imposed by it. The Commission did not receive any relevant comments on the 60-day Federal Register notice.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances are anticipated.

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

This question does not apply. No such decision was made.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which 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 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.

This question does not apply. The regulations do not request nor require the provision of sensitive information, as that term is used in question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity,**

show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A.

As delineated below, the hour burden, per respondent, associated with the regulations, is estimated to be 1,006 hours, at a cost of \$100,600 annually. This burden would result from the requirements that the respondent: (1) prepare and file a Form 8-R designating its chief compliance officer; (2) draft and maintain various policies and procedures; (3) prepare and furnish to the Commission an annual report that contains a description of the respondent's written policies and procedures; identifies those that are reasonably designed to ensure compliance with the requirements of the CEA and relevant Commission regulations and sections 619 and 716 of the Dodd-Frank Act as well material changes made to the policies and procedures during the coverage period; provides an assessment as to their effectiveness, makes recommendations for improvements; describes the respondent's compliance resources, and describes identified material noncompliance issues and the related actions taken; (4) amend a previously furnished annual report when material errors or omissions are identified; and (5) maintain records related to respondent's compliance policies and annual reports.

In light of the current number of Commission-registered swap dealers, major swap participants, and futures commission merchants, the Commission is adjusting the total number of respondents (combined swap dealers, major swap participants, and futures commission merchants). The new total number of respondents is estimated to be 166 and the aggregate hour burdens set forth below are based upon that expectation. The burden hours are not anticipated to vary widely among respondents.

The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$100.00 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 2021 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States¹, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities, Commodity Contracts, and Other

¹ See https://www.bls.gov/oes/current/naics3_523000.htm#23-0000.

Financial Investments and Related Activities Industry,” which is \$102,14; the mean hourly wage of an employee under occupation code 11-3031, “Financial Managers,” in the same industry, which is \$98.64; and the mean hourly wage of an employee under occupation code-13-1041, “Compliance Officers” in the same industry, which is \$44.59. 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 also observes that the Securities Industry and Financial Markets Association’s Report on “Management & Professional Earnings in the Securities Industry – 2013” estimates the average wage of a compliance attorney or compliance staffer (including chief compliance officers and directors of compliance) in the United States at only \$53.71 per hour. The Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the Final Rule 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 per hour. Any determination to use outside counsel, however, is at the discretion of the respondent.

Preparation and Filing of Form 8-R. It is estimated that each respondent would spend 1 hour preparing and filing a Form 8-R designating its chief compliance officer as a principal of the firm. This generally would be a one-time burden that need be repeated only when a new chief compliance officer is named.

Number of respondents: 166 [total number of affected registrants]
Estimated number of responses: 166 [1 per affected registrant]
Estimated total burden on respondents: 1 hour per affected registrant
Frequency of collection: One initial collection and on occasion thereafter
Aggregate reporting burden: 166 respondents x 1.0 hours = 166 burden hours

Drafting and Updating Compliance Policies and Procedures. It is estimated that each respondent would spend 900 hours annually in connection with the requirement that its chief compliance officer establish various compliance policies and procedures. This estimate includes the time needed to review applicable laws and regulations; develop compliance policies and procedures; and consult with respondent’s board of directors or senior officer on compliance policies.

Number of respondents: 166 [total number of affected registrants]
Estimated number of responses: 166 [1 per year per affected registrant]
Estimated annual hour burden on respondents: 900 hours per affected registrant
Frequency of collection: Annually
Aggregate reporting burden: 166 respondents x 900 hours = 149,400 burden hours

Preparation and Furnishing Annual Report. It is estimated that each respondent will spend an additional 80 hours drafting and submitting its annual compliance report. This estimate includes the time needed to collect and analyze the information that underlies the contents of the annual report, to formulate recommendations to existing compliance policies, and to draft the report.

Number of respondents: 166 [total number of affected registrants]
Estimated number of responses: 166 [1 per year per affected registrant]
Estimated annual hour burden on respondents: 80 hours per affected registrant
Frequency of collection: Annually
Aggregate reporting burden: 166 respondents x 80 hours = 13,280 burden hours

Preparation and Furnishing Amended Annual Report. The Commission estimates that a respondent may spend an average of 5 hours annually amending and re-filing an annual report if material errors or omissions are found.

Number of respondents: 166 [total number of affected registrants]
Estimated number of responses: 166 [1 or less per year per affected registrant]
Estimated annual hour burden on respondents: 5 hours [annual average]
Frequency of collection: As needed [estimates based upon average annual collection burden]
Aggregate reporting burden: 166 respondents x 5 hours = 830 burden hours

Recordkeeping Related to Compliance Policies and Annual Report. Each respondent is expected to spend 20 hours annually satisfying the record retention requirements of the rule. This would include the time to be expended maintaining records of the firm's compliance policies; compiling and indexing records relevant to the annual report; and maintaining reports and other materials furnished to the respondent's board of directors or senior officer in connection with the review of the report.

Number of respondents: 166 [total number of registrants]
Estimated number of responses: 166 [1 per affected registrants]
Estimated annual hour burden on respondents: 20 hours per affected registrant
Frequency of collection: Annually
Aggregate reporting burden: 166 respondents x 20 hours = 3,320 hours

Based upon the above, the aggregate cost for all respondents is 166,996 burden hours [1006 hours x 166 respondents] and \$16,699,600 [166,996 burden hours x \$100 per hour].

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 information collection required by the regulations will not involve any capital or start-up capital or operations or maintenance costs as the Commission anticipates that swap dealers, major swap participants, and futures commission merchants already maintain sufficient compliance personnel and systems for the regulatory reporting and recordkeeping that would be required.

- 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.

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

In light of the current number of Commission-registered FCMs, SDs, and MSPs, the total number of respondents (combined FCMs, SDs, and MSPs) is being reduced from 171 to 166.

- 16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This question does not apply.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

This question does not apply.

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

This question does not apply.

Attachment A

Part 3 – Annual Report for Chief Compliance Officer of Registrants

OMB Collection File 3038-0080

| | |
|---|-------------------------|
| Number of Respondents | 166 |
| Estimated Average Burden Hours Per Respondent | 1006 |
| Estimated Annual Cost Per Respondent | \$100,600 |
| Estimated Aggregate Burden Hours | 166,996 |
| Estimated Aggregate Cost | \$16,699,600 |
| % of Responses Collected Electronically | 100 |
| Frequency of Reporting/Recordkeeping | Annually or on occasion |

| Requirement | Estimated # of Respondents Per Year | Estimated # of Responses Per Respondent | Total #Annual Responses | Estimated Average # of Hours Per Response | Estimated Total # of Hours of Annual Burden in Fiscal Year | Estimated Annual Cost Per Respondent |
|----------------------------------|-------------------------------------|---|-------------------------|---|--|--------------------------------------|
| Form 8-R | 166 | 1 | 166 | 1 | 166 | \$100 |
| Drafting Policies and Procedures | 166 | 1 | 166 | 900 | 149,400 | \$90,000 |
| Annual Report | 166 | 1 | 166 | 80 | 13,280 | \$8,000 |
| Amended Report | 166 | 1 | 166 | 5 | 830 | \$500 |
| Recordkeeping | 166 | 1 | 166 | 20 | 3,320 | \$2,000 |
| | | | | | | |
| Total | | | | 1,006 | 166,996 | \$100,600 |