

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

Swap Data Recordkeeping and Reporting Requirements; Pre-Enactment and Transition Swaps

**OMB CONTROL NUMBER 3038-0089**

**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.**

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.<sup>1</sup> Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to create a regulatory framework for swaps. Section 723 of Title VII amended Section 2 of the CEA to provide that rules adopted by the Commodity Futures Trading Commission (“Commission”) to implement Section 2 shall provide for the reporting of data relating to both: (i) swaps entered into before the date of enactment of the Dodd-Frank Act, the terms of which have not expired as of the date of enactment of that Act (“pre-enactment swaps”) and (ii) swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the compliance date specified in Commission swap data reporting rules implementing Section 2(h)(5)(B) (“transition swaps”). On June 12, 2012, the Commission adopted regulation 46, which imposes recordkeeping and reporting requirements relating to pre-enactment and transition swaps (collectively, “historical swaps”).

This supporting statement concerns the renewal of existing collections of information required by 17 CFR Part 46. CFTC regulation 46 imposes recordkeeping and reporting requirements, relating to historical swaps, on the following entities: swap dealers (“SDs”), major swap participants (“MSPs”), and counterparties to swaps who are neither SDs nor MSPs (“non-SD/MSP counterparties”). Section 46.2 requires affected entities to keep certain records relating to historical swaps; Section 46.3 requires affected entities to make an initial data report regarding historical swaps to a swap data repository (“SDR”) and make on-going reports to a SDR for certain historical swaps throughout the existence of the swaps; Section 46.11 requires affected entities to report errors and omissions in data previously reported regarding historical swaps to a SDR.

- 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 Commission uses the data required by CFTC regulation 46 to fulfill its regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention.

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<sup>1</sup> Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)

- 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.**

CFTC regulation 46 generally requires affected parties to maintain records electronically. However, to lessen regulatory burden, CFTC regulation 46 details certain instances in which affected parties may choose to meet their recordkeeping obligations by maintaining required records in paper form. CFTC regulation 46 generally requires affected parties to report data regarding historical swaps in existence on or after April 25, 2011 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.**

Prior to enactment of the Dodd-Frank Act, the Commission did not have authority to require swap data recordkeeping and reporting for historical swaps. The information required to be reported by respondents pursuant to Part 46 is not otherwise available to the Commission or other agencies. The information collection is not otherwise available from any other source. 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.

- 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.**

The entities affected by CFTC regulation 46 include SDs, MSPs, and non-SD/MSP counterparties. SDs and MSPs are not small entities for the purposes of the Regulatory Flexibility Act.<sup>2</sup> Although there are an estimated 30,000 non-SD/MSP counterparties, very few non-SD/MSP counterparties are required to report swap data pursuant to CFTC regulation 46. CFTC regulation 46 requires reporting by a non-SD/MSP counterparty only with respect to swaps in which the other counterparty is not an SD or MSP, and the considerable majority of swaps involve at least one SD or MSP. While CFTC regulation 46 also requires recordkeeping of non-SD/MSP counterparties, the Commission believes that the records required under CFTC regulation 46 are already kept by swap counterparties in their normal course of business.

- 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.**

Failure to maintain the records or to report historical swap data required by CFTC regulation 46 would adversely affect the Commission's ability to ensure that complete data concerning all swaps is maintained in SDRs and is available to the Commission and other regulators as required

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<sup>2</sup> See respectively, Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) and 75 FR 71379, 71385 (Nov. 23, 2010) (swap dealers and major swap participants).

by the Dodd-Frank Act. The information collection cannot be conducted less frequently without compromising the accuracy and timeliness of the data.

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

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

CFTC regulation 46 requires reporting directly to the Commission only in the exceptional case of a swap in an asset class for which no SDR accepts swap data. Such reporting will be required only when requested by the Commission and has not occurred since the Commission adopted regulation 46 on June 12, 2012.

- **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. CFTC regulation 46 does not require written responses to a collection of information in fewer than 30 days after receipt.

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

This question does not apply. CFTC regulation 46 does not require the submission of any original documents or copies of documents. CFTC regulation 46 generally requires electronic reporting.

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

Section 46.2 requires affected parties to keep certain records pertaining to historical swaps throughout the life of the swap, and for a period of at least five years from final termination of the swap. This retention period is required because swap transactions can continue to exist over substantial periods of time, during which their key economic terms can change. Accordingly, swaps must be monitored by the Commission and other financial regulators throughout their existence, pursuant to the Dodd-Frank Act.

- **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. CFTC regulation 46 does not require nor involve any statistical surveys.

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

This question does not apply. CFTC regulation 46 does not require nor involve the use of any statistical data classification.

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

This question does not apply. CFTC regulation 46 does not require nor 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.**

CFTC regulation 46 requires the reporting of data to SDRs. The Commission's regulations require SDRs to maintain safeguards against the misappropriation or misuse of swap data. The Commission has access to data maintained at SDRs, but is prohibited (save for limited exceptions) from disclosing swap data pursuant to Section 8 of the CEA.

- 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.**

On April 26, the Commission published a notice in the Federal Register soliciting public comment on the renewal of this collection at 87 FR 24534. No relevant comments were received.

**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.**

The Commission has continued to meet with affected parties since CFTC regulation 46 was enacted.

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

This question does not apply. This information collection does not involve the provision of any payment or gift 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 is required to provide confidentiality to respondents pursuant to the Freedom of Information Act, Privacy Act of 1974, CEA, and Commission regulations requiring the confidentiality of information.<sup>3</sup> Section 8(a) of the CEA provides for the confidentiality of data and information except under the limited circumstances delineated therein.

**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. CFTC regulation 46 does not require nor request 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**

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<sup>3</sup> See 17 C.F.R. Part 145.

**information collection activities should not be included here. Instead, this cost should be included in Item 13.**

CFTC regulation 46 imposes recordkeeping and reporting obligations on affected parties. As detailed below, Commission staff estimate that the estimated 30,108 respondents incur a total annual burden of 15,287 hours and an associated total cost of \$1,163,396.

#### Regulation 46.2: Recordkeeping Burdens

##### *Swap Dealers and Major Swap Participants*

SDs and MSPs are counterparties to the vast majority of swaps. Consequently, the vast majority of swap records are maintained by SDs and MSPs. In addition to the substantial one-time costs already incurred by SDs and MSPs to establish systems and processes to comply with the Commission's swap recordkeeping requirements, Commission staff estimate that SDs and MSPs incur an annual burden of approximately 56 hours per respondent to comply with Commission swap recordkeeping requirements specific to historical swaps. Additionally, the Commission estimates that SDs and MSPs incur burdens associated with retrieving historical swap records required to be maintained by Regulation 46.2. The Commission estimates that SDs and MSPs incur an annual burden of approximately 13.5 hours per respondent to retrieve historical swap records.

The total annual recordkeeping burden-hour cost for each SD/MSP is estimated to be approximately \$5,678.15 per entity (69.5 hours x \$81.70 per hour). In calculating the cost estimate, the Commission estimated 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 \$81.70 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 2021) multiplied by 1.3 to account for overhead and other benefits.<sup>4</sup> 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.

##### *Non-Swap Dealers/Major Swap Participants*

As permitted by Regulation 46.2(d), non-SD/MSP swap counterparties are *not* required to keep required historical swap records readily accessible via real time electronic access. Non-SD/MSP historical swap counterparties therefore incurred significantly lower costs to establish systems to comply with the Commission's historical swap recordkeeping requirements than SDs/MSPs. The annual burden incurred across the estimated 30,000 non-SD/MSPs counterparties likely varies

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<sup>4</sup> The BLS Occupational Employment and Wages Report is available at: [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm).

greatly based upon whether the non-SD/MSP counterparties were counterparties to historical swaps and whether those historical swaps continue to be subject to the recordkeeping requirements of Regulation 46.2. On average, the Commission estimates that each of the 30,000 non-SD/MSP counterparties incurs an annual burden of approximately 0.2 hours to comply with Commission swap recordkeeping requirements specific to historical swaps. The total average annual recordkeeping burden-hour cost for each non-SD/MSP is estimated to be approximately \$16.34 per entity (0.2 hours x \$81.70 per hour).

### Regulation 46: Reporting Burdens

CFTC regulation 46 required both (i) a one-time reporting of each historical swap to a SDR shortly after the adoption of CFTC regulation 46 and (ii) the ongoing reporting of continuation data regarding historical swaps that continue to be in existence. The vast-majority of historical swaps have been terminated by the parties to the swaps or are no longer in existence. As affected parties are generally only required to submit reports regarding swaps that continue to exist, the number of reports made pursuant to 17 CFR 46 has declined significantly over time and is expected to continue to decline until all historical swaps cease to be in existence. The electronic reporting required by Regulation 46 is generally accomplished in an automated manner by respondents' computer systems. The burden hours incurred by respondents to comply with these Sections is primarily related to the hours necessary to oversee, maintain, and utilize their automated reporting functionality.

### *Swap Dealers and Major Swap Participants*

SDs and MSPs have high levels of reporting activity. In addition to the substantial one-time costs already incurred by SDs and MSPs to establish systems and processes to comply with the Commission's swap reporting requirements, Commission staff estimate that SDs and MSPs incur an annual burden of approximately 5 hours per respondent to comply with Commission swap reporting requirements specific to historical swaps. Commission staff calculated the time burden by estimating the burden incurred by respondents to operate and maintain swap data reporting systems and then estimating the portion of that burden associated with historical swaps. The total annual reporting burden-hour cost for each SDs/MSP is estimated to be approximately \$408.50 per entity (5 hours x \$81.70 per hour). The total annual reporting burden-hour cost calculation reflects the Commission's adoption of changes to Part 46.<sup>5</sup> Specifically, the change will no longer require reporting counterparties to send daily state data reports for their part 46 historical swaps.<sup>6</sup> The estimated annual time burden associated with this collection has decreased as the number of reports made concerning pre-enactment and transition swaps has decreased over time. The Commission estimates the changes adopted in Part 46 will reduce the number of continuation data reports reporting counterparties send SDRs for historical swaps by 50 percent.<sup>7</sup>

### *Non-Swap Dealers/Major Swap Participants*

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<sup>5</sup> Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 75503 (Nov. 25, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 75549.

Regulation 46 generally only requires reporting by a non-SD/MSP counterparties when they are counterparty to a historical swap with another non-SD/MSP counterparty and that swap has not been terminated or otherwise extinguished. As noted above, SDs and MSPs are counterparties to the vast majority of swaps and the vast majority of historical swaps have been terminated or have otherwise ceased to exist since the drafting of Regulation 46. Commission staff estimate that approximately 500 non-SD/MSP counterparties may be a counterparty to a low number of historical swaps with non-SD/MSP counterparties that continue to exist. Commission staff estimate that these 500 non-SD/MSP counterparties incur an annual burden of approximately .64 hours per respondent to comply with Commission swap reporting requirements specific to historical swaps.<sup>8</sup> Commission staff calculated the time burden by estimating the burden incurred by respondents to operate and maintain swap data reporting systems and then estimating the portion of that burden associated with historical swaps. The total annual reporting burden-hour cost for each of the 500 reporting non-SDs/MSP counterparties is estimated to be approximately \$52.29 per entity (.64 hours x \$81.70 per hour). As stated in the subsection above, the calculation is reflective of both a continued decrease in the number of pre-enactment and transition swaps in existence as well as the reports associated with them.<sup>9</sup>

**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.**

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*



- **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 Commission believes that part 46 does not continue to impose any additional (i.e., capital and start-up costs, as well as annual operation and maintenance costs) costs on affected entities.

- 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 will have the following costs relating to the information collections required by part 46: (1) costs relating to the need of Commission staff to review and analyze the collected documents and information; (2) costs relating to the technology that must be set up and maintained by the Commission to receive and process the information collected. These costs were already accounted for in the Commission's response to Question 14 in the OMB Supporting Statement relating to part 45. Therefore, the instant part 46 does not represent any additional costs to 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.**

The estimated annual time burden associated with this collection has decreased. As explained in response to Question 12, CFTC regulation 46 required both (i) a one-time reporting of each historical swap to a SDR shortly after the adoption of CFTC regulation 46 and (ii) the ongoing reporting of continuation data regarding historical swaps that continue to be in existence. The vast-majority of historical swaps have been terminated by the parties to the swaps or are no longer in existence. As affected parties are generally only required to submit reports regarding swaps that continue to exist, the number of reports being made pursuant to 17 CFR 46 has declined significantly over time and is expected to continue to decline until all historical swaps cease to be in existence. As the number of reports decreases, the annual time burden on respondents also decrease. Commission staff estimated 30,125 respondents incurred a total annual burden of 17,328 hours and an associated total cost of \$1,293,500 in 2019. The number of respondents, total burden hours, and costs have decreased by 17 respondents, 2,041 annual burden hours, and \$130,104 since 2019.

- 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.**

As required in Dodd-Frank Act Section 727, the Commission will aggregate the data provided to SDRs and provide a written report to the public on a semiannual basis. There is no end date for these reports issued by the Commission. As required by the Dodd-Frank Act, the reports will contain information relating to trading and clearing in the major swap categories as well as market participants and developments in new products. In preparing the reports, the Commission is required to consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and other regulatory bodies as necessary.

**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 1: Estimated burden cost (0089)**  
(See Response to Question 12)<sup>10</sup>

**Recordkeeping Summary Table**

<b>Entity</b>	<b>Annual Burden Hours (Per Entity)</b>	<b>Annual Cost (Per Entity)</b>	<b>Aggregate Annual Burden Hours (All Entities)</b>	<b>Aggregate Annual Cost (All Entities)</b>
108 SD/MSPs	69.5	\$5,678	7,506	\$613,224
30,000 Non-SD/MSP	.2	\$16	6,000	\$480,000
Total	69.7	\$5,694	13,506	\$1,093,224

<sup>10</sup> Numbers in the table are subject to rounding.

### Reporting Summary Table

<b>Entity</b>	<b>Annual Burden Hours (Per Entity)</b>	<b>Annual Cost (Per Entity)</b>	<b>Aggregate Annual Burden Hours (All Entities)</b>	<b>Aggregate Annual Cost (All Entities)</b>
108 SD/MSPs	5	\$409	540	\$44,172
500 Non-SD/MSPs	.64	\$52	320	\$26,000
Total	5.64	\$461	860	\$70,172
<b>Total for Recordkeeping and Reporting</b>	75.34	\$6,155	14,366	\$1,163,396