

SUPPORTING STATEMENT FOR  
REVISED INFORMATION COLLECTION

Swap Confirmation Requirements for Swap Execution Facilities

OMB CONTROL NUMBER 3038-0074

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.

CFTC regulations require a Swap Execution Facilities (SEF) to provide each counterparty to a swap transaction, whether cleared or uncleared, that is entered into on or pursuant to the rules of the SEF, with a written “confirmation” that contains all of the terms of the transaction. 17 CFR 37.6(b). With respect to an uncleared swap transaction, a SEF may comply with the requirement to include in the confirmation all of the terms of the transaction, by incorporating by reference relevant terms set forth in underlying, previously-negotiated agreements between the counterparties, as long as the SEF has obtained these agreements prior to execution of the transaction.

The proposed rulemaking would add new § 37.6(b)(1), which would permit SEFs to incorporate by reference into a swap confirmation the relevant terms set forth in underlying, previously-negotiated agreements without being required to obtain these agreements. The Commission anticipates that this proposed approach will address technological and operational challenges that have prevented SEFs from fully complying with § 37.6(b), by reducing the administrative burdens for SEFs, who would not be required to request, accept, and maintain a library of every relevant previously negotiated agreement between counterparties. This revised information collection is necessary for SEFs to provide legal certainty of transactions executed on or pursuant to the rules of a SEF through the issuance of swap confirmations for each swap transaction.

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 will be used by SEFs to provide legal certainty of transactions by providing each counterparty to a transaction that is executed on or pursuant to the rules of the SEF with a written record of all of the terms of the transaction which shall legally supersede any conflicting terms of a previous agreement and serve as a confirmation of the transaction.

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 proposed revision to the information collection for swap confirmations under proposed amendments to § 37.6(b) is technology neutral allowing the SEF to choose the most efficient and effective method by which to provide a swap confirmation.

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.

Information collected under the proposed revision is not available from any other source than the SEF where the transaction is executed.

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 required information collected under this OMB Control Number does not involve any small businesses or other small entities.

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

The Commission's rules require a SEF to provide each counterparty to a transaction with a written record of all of the terms of the transaction which serves as a confirmation of the transaction. 17 CFR 37.6(b). Less frequent information collections could impair the legal certainty of transactions for market participants as well as diminish the accuracy for counterparties regarding exposure levels with other counterparties which could harm the Commission's stated mission to foster open, transparent, competitive, and financially sound markets.

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

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

The proposed revisions to this collection does not require respondents to report information to the agency 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;

The proposed revision to this collection do not require respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.

- 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.

- 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 and Core Principle 10 (Recordkeeping) require 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;

The proposed revision to this collection does not involve a statistical survey.

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

The proposed revision to this collection does not involve the use of any statistical data.

- 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 proposed revision to this 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 proposed revision to this collection does not require respondents to submit proprietary trade secrets, or other confidential information to the Commission.

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.

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 published a notice of proposed rulemaking (NPRM) in the Federal Register, which includes a request for comment on all aspects of the proposed regulation, as well as requests for comment on specific provisions and issues (including all aspects of the proposed information collection requirements). 88 FR 58145 (Aug. 25, 2023). The NPRM also notifies the public and other federal agencies that the Commission will submit an information collection request.

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

The question is not applicable.

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 is subject to 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 an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the

questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The regulations covered by this collection do not 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. Commission staff estimates that, if the proposed rules are adopted, 23 SEFs would require an estimated 375 hours per respondent to comply with the rule's amended reporting obligations.<sup>1</sup> This yields an estimated annual burden for covered respondents of 8,625 hours (23 respondents × 375 hours = 8,625 hours). Commission staff estimates that each respondent SEF will expend up to \$30,000 annually based on an hourly rate<sup>2</sup> of \$80 to comply with the proposed regulations. This results in an

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<sup>1</sup> The Commission estimates that the process to obtain, review, incorporate, and maintain the previously-negotiated agreements would take SEFs approximately 1 hour per SEF participant, if the proposed rules are adopted, and that on average, a SEF has about 375 participants. Accordingly, the Commission calculates the burden per SEF as follows: 375 participants × 1.0 hour per participant = 375 estimated burden hours per SEF.

<sup>2</sup> In support of this determination, the Commission notes that the salary estimate is based upon May 2019 National Occupational Employment and Wage Estimates, United States, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities, Commodity Contracts, and Other Financial Investments and Related Activities Industry," which is \$92.59; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$90.41; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$38.29.

aggregated cost for all respondent SEFs of \$690,000 per annum (23 respondent SEFs × \$30,000 = \$690,000).

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.

It is expected that SEFs will utilize existing software, information technology, and systems. Thus, the Commission believes that SEFs will not incur additional capital/startup costs or operational/maintenance costs to report the information required by the proposed rule.

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.

It is not anticipated that the proposed rule will impose 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 Commission is proposing to amend its rules governing Swap Confirmation Requirements for Swap Execution Facilities to permit SEFs to incorporate by reference in a confirmation relevant terms set forth in underlying, previously-negotiated agreements without being required to obtain these agreements. If the proposed rules are adopted, the Commission proposes to revise control number 3038-0074 to add a new Information Collection reflecting the revised burden for SEFs to issue swap confirmations under the Rule. The estimated burden for this Information Collection would total 8,625 hours per year for all covered respondents (23 respondents × 375 hours = 8,625 hours). (See Attachment A).

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.

No exceptions exist.

**Part 37 Establishing Procedures for  
Compliance with Core Principles and Other Requirements for SEFs and Applicants Seeking SEF  
Registration<sup>3</sup>**

**Revised Table for Estimated Annual Burden Hours for Registered SEFs and Applicants for Permanent  
SEF Registration**

Report	Estimated Number of Respondents	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours per year	Annual Reporting & Recordkeeping Burden Hours	Estimated Annual Cost Per Registrant <sup>4</sup>	Estimated Aggregate Annual Cost <sup>5</sup>
<b>§ 37.6(b) Confirmation Requirement (for registered SEFs)</b>	23	35,217 <sup>6</sup>	810,000 <sup>7</sup> (rounded)	375 <sup>8</sup>	8,625	\$30,000 <sup>9</sup>	\$690,000 <sup>10</sup>

<sup>3</sup> As noted above in footnote 2, this OMB Control Number 3038-0074 covers all information collections in part 37 of the Commission's regulations, including the information collection in Subpart A and the SEF core principles (*i.e.*, Subparts B and C), other than the information collections related to § 37.10, which are covered separately under OMB Control Number 3038-0099.

<sup>4</sup> For purposes of these cost estimates, an hourly wage rate of \$100 was used. Thus, the figures in this column reflect the "Estimated Annual Hour Burden Per Registrant" multiplied by \$100.

<sup>5</sup> The figures in this column reflect the "Estimated Number of Registrants Per Year" multiplied by the "Estimated Annual Cost Per Registrant."

<sup>6</sup> 810,000 total annual responses / 23 SEF respondents = 35,217 annual responses per SEF (rounded). See footnote 6 for the explanation regarding the calculation of 810,000 total annual responses.

<sup>7</sup> Based on industry data, the Commission estimates that from January 1, 2016 to May 31, 2016 approximately 168,000 (rounded amount) swap transactions were executed across all SEFs. Annualized, this means that the Commission expects approximately 405,000 swap transactions across all SEFs for 2016. Because each swap transaction requires a SEF to provide 2 responses (*i.e.*, a SEF must provide a confirmation to both swap counterparties), the Commission estimates that in the aggregate SEFs will provide approximately 810,000 swap confirmations (405,000 swaps × 2 counterparties = 810,000 swap confirmations).

<sup>8</sup> Based on its own observation as well as feedback from market participants, the Commission previously estimated that the process for a SEF to obtain, review, incorporate, and maintain the previously-negotiated agreements or documents, as well as to update such agreements or documents to reflect any applicable counterparty amendments, takes approximately 1.5 hour per SEF participant per year, and that on average a SEF has approximately 375 participants. Accordingly, the Commission estimated 375 participants × 1.5 hours per participant = 562.5 estimated burden hours (which the Commission rounded to 563 hours for these purposes). Based on the proposed revisions to § 37.6(b), which eliminates the need for a SEF to obtain, review, and maintain previously-negotiated underlying agreement, the Commission estimates that the it will take approximately 1 hour per SEF participant per year to provide confirmations, including through incorporation by reference.

<sup>9</sup> Based on an hourly rate of \$80 to comply with the proposed regulations, the Commission estimated 375 burden hours × \$80 = \$30,000.

<sup>10</sup> The Commission estimates this based on 23 respondent SEFs × \$30,000 = \$690,000.



