

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

### Process for Review of Swaps for Mandatory Clearing

OMB CONTROL NUMBER 3038-0097

#### 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.

The Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 2(h) of the Commodity Exchange Act (“CEA”) to require any derivatives clearing organization (“DCO”) that wishes to accept a swap for clearing to be eligible to clear the swap and to submit the swap to the Commission for a determination as to whether the swap is required to be cleared. The information collected is necessary for the Commission to conduct its review.

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 collected is analyzed by Commission staff to determine whether a DCO that wishes to accept a swap for clearing is eligible to clear the swap and whether the swap should be required to be cleared.

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 is required to 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 required information is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information 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 Form 83-I), describe the methods used to minimize burden.

The required information 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 collection could not be conducted less frequently; a DCO is only required to make a one-time submission before it first accepts a swap for clearing.

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 regulations require a DCO to submit information only when it decides to accept a swap for clearing.

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

There is no deadline; a DCO does not have to submit information until it wants to accept a swap for clearing.

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

DCOs are required to submit only single 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;

There is no recordkeeping requirement specific to this rule. The CEA and Commission Regulation 1.31(b) require a DCO to maintain records of all activities related to its business as a DCO in a form and manner that is acceptable to the Commission for a period of not less than 5 years.

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;

No statistical surveys are involved.

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

The requirements do not involve 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

The requirements do not involve a pledge of confidentiality regarding the collection of data.

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 agency has procedures to protect the confidentiality of a respondent's information set forth in 17 CFR Parts 145 and 147.

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.

The 60-day *Federal Register* notice soliciting public comments was published on June 28, 2023. Agency Information Collection Activities: Notice of Intent to Renew Collection; 3038-0097; Process for Review of Swaps for Mandatory Clearing, 88 FR 41932 (June 28, 2023). The Commission did not receive any relevant comments that addressed its Paperwork Reduction Act burden estimates.

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's regulations establishing the process by which the Commission will review swaps to determine whether the swaps are required to be cleared are found in part 39 of the Commission's regulations. Commission staff engages with persons outside the agency to discuss the clearing of swaps and the process requirements where appropriate, but there has been no discussion of the changing the requirements specifically.

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.

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.

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

The Commission provides no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 CFR Part 145. 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 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.

This question does not apply. None of the required information is sensitive, 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. The total number of respondents remains 15 based on the current number of registered DCOs.

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.

No new start-up or operations and maintenance costs are involved. See Attachment A.

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 estimate of the cost to the government is about \$2,659.40 per submission and \$39,891.00 per year, assuming the Commission receives, on average, 15 submissions per year (an average of one per respondent). This is primarily salaries and benefits for staff

to analyze the information received, as follows: One full time equivalent reviewing for 10 hours per submission at an average salary of \$265.94 per hour.<sup>1</sup>

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

There are no program changes. As noted in the response to Question 12, above, the total number of respondents remains 15 based on the current number of registered DCOs. There are no changes to the Commission's existing burden hours estimates, but the Commission is updating its labor cost estimates based upon updated Bureau of Labor Statistics wage data. 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.

This question does not apply.

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<sup>1</sup> This figure is based on the mean annual salary of an employee within the CT-14 pay band, divided by 1,800 work hours in a year to account for sick leave and vacations, and multiplied by 2.5 to account for retirement, health, and other benefits, as well as for office space, computer equipment support, and human resources support. See CFTC 2022 Pay Table (as of Jan. 2022), Jan. 2, 2022, available at <https://www.cftc.gov/media/6896/CFTC2022paytables010322/download>.

Attachment A  
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Swap Submissions  
From Derivatives Clearing Organizations

1. Estimated # of Respondents Per Year	2. Submissions Annually by Each	3. Total Annual Responses	4. Estimated Average Number of Hours Per Response	5. Estimated Total Number of Hours of Annual Burden in Fiscal Year	6. Estimated Annual Cost Per Respondent <sup>2</sup>	7. Total Annual Burden Hour Cost of All Responses
15	1	15	40	600	\$14,182.00	\$212,730

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<sup>2</sup> This figure is derived from a blended average hourly wage based on U.S. Bureau of Labor Statistics (BLS) occupation categories for lawyers (occupation code 23-1011) and financial managers (occupation code 11-3031) employed in the Securities, Commodity Contracts, and Other Financial Investments and Related Activities field. See BLS, May 2022 National Industry-Specific Occupational Employment and Wage Estimates NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm). Specifically, this figure is derived from the average annual mean wage of both categories; divided by 1,800 work hours in a year to account for sick leave and vacations; multiplied by 2.5 to account for retirement, health, and other benefits, as well as for office space, computer equipment support, and human resources support; and further multiplied by 1.0359695 to account for the 3.59695% change in the Consumer Price Index for Urban Wage-Earners and Clerical Workers between May 2022 and May 2023 (288.022 to 298.382). BLS, CPI for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items – CWUR0000SA0, available at <https://www.bls.gov/data/#prices>. Together, these modifications yield an hourly rate of \$354.55.