SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Clearing Exemption for Swaps Between Certain Affiliated Entities

OMB CONTROL NUMBER 3038-0104

Rule 50.52 (Exemption for Swaps Between Affiliates)

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 2(h)(1)(A) of the Commodity Exchange Act ("CEA") makes it unlawful for any person to engage in a swap if the Commodity Futures Trading Commission ("Commission") determines such swap is required to be cleared, unless that person submits the swap for clearing to a registered derivatives clearing organization. 7 U.S.C. 2(h)(1)(A). By exercising its general exemptive authority in CEA section 4(c)(1), on April 1, 2013, the Commission adopted a final rule exempting from the statutory clearing requirement swap transactions between certain affiliated entities within a corporate group ("inter-affiliate swaps"), subject to certain conditions.[1] 7 U.S.C. 6(c). Commission regulation 50.52 contains an elective exemption for qualifying counterparties and outlines the conditions entities must satisfy in order to rely upon it. In July 2020, the Commission adopted amendments to Commission 50.52 to update certain conditions to the inter-affiliate exemption that are intended to prevent evasion of the swap clearing requirement.[2] These conditions are designed and are necessary to address Commission concerns regarding inter-affiliate swap risk and to provide the Commission with information necessary to regulate swaps markets.

Among the conditions of the exemption is a notification and reporting requirement. By electing the exemption, affiliated entities, known as "eligible affiliate counterparties" will be transacting uncleared swaps, transactions that CEA section 4r requires be reported to a swap data repository ("SDR"), or to the Commission if no SDR will accept such information. 7 U.S.C. 6r. Commission regulation 50.52(c) implements the reporting requirement in CEA section 4r for these uncleared inter-affiliate swaps and specifies the exact information that must be reported. CEA section 2(j) further requires a counterparty that is an issuer of securities under section 12 of the

[1] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750 (Apr. 11, 2013).

[2] Exemption From the Swap Clearing Requirement for Certain Affiliated Entities – Alternative Compliance Frameworks for Anti-Evasionary Measures, 85 FR 44170 (July 22, 2020). These amendments make permanent certain temporary alternative compliance frameworks that were intended to make an anti-evasionary provision workable for international corporate groups in the absence of foreign clearing regimes determined to be comparable to CFTC requirements. Because this final rule amendment was intended to align with previously granted relief, it was not expected to change the number or type of entities that elected the inter-affiliate exemption. Moreover, the amendments did not modify the reporting requirement under Commission regulations 50.52(c) and (d). *Id.* at 44177. These reporting provisions are discussed in more detail below.

Securities Exchange Act of 1934 ("Exchange Act") or that is required to file reports under Exchange Act section 15(d) (collectively, "SEC Filers") electing the end-user exception to first have an appropriate committee of the issuer's board or governing body review and approve its decision to enter into those uncleared swaps. 7 U.S.C. 2(j). Commission regulation 50.52(c)(3) extends the CEA section 2(j) requirement to SEC Filers electing the exemption for swaps between affiliated entities by collecting information necessary to satisfy that requirement. Additionally, Commission regulation 50.52(d) allows counterparties to submit some information, including the information required by CEA section 2(j), on an annual basis, as opposed to submitting identical information with each qualifying inter-affiliate swap.

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.

Since the Commission adopted Commission regulation 50.52 in 2013, the data requested under this collection of information has been collected by SDRs. The Commission has used the data to monitor use of the exemption by eligible affiliate counterparties, to analyze the risk characteristics of uncleared swaps generally, and to enhance the Commission's ability to identify and reduce potential systemic risk.

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 Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. The information required under this collection may be submitted electronically to an SDR. The Commission understands that 100% of the information reported pursuant to this collection of information is submitted 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 available from 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.

This collection of information will not have a significant impact on a substantial number of small entities.

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

If the information required under this collection of information were not collected or was conducted less frequently, then the Commission's ability to monitor and enforce the conditions set forth in the exemption would be hindered. The Commission would be unable to ensure that only eligible affiliate counterparties meeting the specified conditions elect the exemption, and the Commission's ability to evaluate the risks of, and monitor the use of uncleared inter-affiliate swaps would be hindered. In addition, failure to obtain the subject information would adversely affect the Commission's ability to ensure the counterparties' compliance with their obligations under the CEA and Commission regulations related to the swap clearing requirement. The integrity and efficiency of the swap markets would be adversely affected because the information collection allows counterparties to elect an exemption for certain swaps from the clearing requirement. 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;**

The reporting counterparty must report the information required in Commission regulation 50.52(c)(1) for each swap. It also must report the information required in Commission regulation 50.52(c)(2)-(3) for each swap if no annual report had been filed. However, the Commission has given respondents the option to report the same information on an annual basis instead. The Commission understands that 100% of the entities electing the inter-affiliate exemption report annually.

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

The reporting counterparty must report the information required in Commission regulation 50.52(c)(1) for each swap. It also must report the information required in Commission regulation 50.52(c)(2)-(3) for each swap if no annual report has been filed. However, the Commission has given respondents the option to report the same information on an annual basis instead. The Commission understands that 100% of the entities electing the inter-affiliate exemption report annually.

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

The exemption does not impose any requirements that obligate an applicant to submit more than an original and two copies of any document.

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

The exemption does not impose any recordkeeping requirements.

- **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 exemption 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;**

The exemption 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 statue 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 exemption does 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 exemption does not specifically require any person to submit data involving confidential information or trade secrets. In any event, the Commission has promulgated regulations to protect the confidentiality of the information collected from respondents. They are set forth in 17 CFR part 145.

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.

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.

The Commission published a *Notice of Intent to Extend Collection 3038-0104: Clearing Exemption for Swaps Between Certain Affiliated Entities* in the *Federal Register*. See 89 FR 92908 (Nov. 25, 2024). The notice provided a 60-day period during which the public was invited to comment on the information collection and the burdens imposed by it. The Commission did not receive any relevant comments on the 60-day Federal Register notice.

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 does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market public positions of any person and trade secrets or names of customers." The Commission has procedures to protect the confidentiality of a respondent's data. These are set forth in the Commission's regulations at 17 CFR part 145.

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 inter-affiliate exemption does not require any persons to report 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. The Commission estimates that approximately 478 respondents file a form once each calendar year, producing a total of 478 responses annually. The estimated average number of hours required to prepare each annual report is 1 hour. The cost of the hourly burden per annual report is estimated to be $379.93.

As set forth more in greater detail in Attachment A, the annual respondent burden for this information collection during the renewal period is estimated to be as follows:

Estimated Number of Respondents: 478
Estimated Average Annual Burden Hours per Respondent: 1 hour
Estimated Total Annual Burden Hours: 478 hours
Estimated Annual Burden Cost: $181,606.54
Frequency of Collection: Annually; on occasion.

Commission staff has not changed the estimated average annual burden hours per respondent. The information reported on the form has not changed since the prior information collection renewal and much of the information on the form will remain the same for the reporting entity.

The total annual burden hour estimate was derived by multiplying the estimated number of annual respondents (478 respondents) by the estimated average burden hours per respondent (1 hour).

The estimated burden cost was calculated by multiplying the estimated total annual burden hours (478 hours) by a burden hour cost of $379.93.[3] The Commission views this as an appropriate

[3] This figure is derived based on U.S. Bureau of Labor Statistics (BLS) data for the annual mean wage for lawyers (occupation code 23-1011) employed in the industry "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" ($264,110), 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 1.03573942 to account for the

salary estimate for the level of staff responsible for preparing and submitting an annual form electing the inter-affiliate exemption under Commission regulation 50.52.

The estimated number of respondents and estimated average burden hour cost have increased from the estimates used in the prior renewal period; however, the estimated number of reports by each respondent and estimated average number of burden hours per response have not changed.[4]

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.**

3.57394213% change in the Consumer Price Index for Urban Wage Earners and Clerical Workers between May 2023 and September 2024 (298.382 to 309.046). *See* BLS, May 2023 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/2023/may/naics4_523000.htm*; BLS, CPI for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items – CWUR0000SA0, available at *https://www.bls.gov/cpi/data.htm*. Together, these modifications yield an hourly rate of approximately $379.93.

[4] The total estimated annual burden hour costs for all respondents increased from $20,000 in the previous renewal of this information collection to an estimated $181,606.54. This can be attributed to a change in the estimated burden hour cost from a wage of $100 per hour to an estimated average burden hour cost of $379.93 per hour and a change in the estimated number of respondents from 200 to 478.

To the extent that the collection is being renewed, the Commission believes that capital and start-up costs have already been incurred and the additional technological infrastructure required to satisfy the reporting responsibility will be minimal. Commission regulation 50.52 requires the reporting counterparty to report specified information to a registered SDR either on an annual basis or each time a swap relying on the inter-affiliate exemption is entered into. The Commission understands that all reporting counterparties file this report on an annual basis. The Commission understands that this report is filed by relatively simple means, by accessing a pdf form on a website and providing basic information.

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.

No additional costs to the government will result from the renewal of this collection of information.

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

Commission staff updated the estimated number of respondents after reviewing information available from DTCC Data Repository (U.S.) LLC, one of the Commission's provisionally-registered SDRs. This SDR is more commonly used to report uncleared swaps. The new estimate was prepared by identifying the number of entities that had submitted or renewed an inter-affiliate exemption annual form in 2024 (year to date), plus the number of entities that had submitted or renewed an inter-affiliate exemption annual form in 2023 whose election had not yet expired, less the average number of entities whose elections lapsed annually between 2021 and 2024.

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.

Attachment A

Rule 50.52 (Exemption for Swaps Between Affiliates)

OMB Collection File 3038-0104

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (6 x 9)
50.52(c)-(d)	478	1	1	1	$379.93[5]	$379.93	478	478	$181,606.54

[5] This figure is derived based on U.S. Bureau of Labor Statistics (BLS) data for the annual mean wage for lawyers (occupation code 23-1011) employed in the industry "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" ($264,110), 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 1.03573942 to account for the 3.57394213% change in the Consumer Price Index for Urban Wage Earners and Clerical Workers between May 2023 and September 2024 (298.382 to 309.046). *See* BLS, May 2023 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/2023/may/naics4_523000.htm*; BLS, CPI for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items – CWUR0000SA0, available at *https://www.bls.gov/cpi/data.htm*. Together, these modifications yield an hourly rate of approximately $379.93.