

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

Customer Clearing Documentation and Timing of Acceptance for Clearing

OMB CONTROL NUMBER 3038-____

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 4d(c) of the CEA, as amended by the Dodd-Frank Act, directs the Commission to require futures commission merchants to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. Similarly, section 4s(j)(5), as added by the Dodd-Frank Act, requires swap dealers and major swap participants to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. Section 4s(j)(5) also requires swap dealers and major swap participants to ensure that any persons providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions from persons whose involvement in pricing, trading, or clearing activities might bias their judgment or contravene the core principle of open access. Section 4s(j)(6) of the CEA prohibits a swap dealer and major swap participant from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Act. Section 2(h)(1)(B)(ii) of the CEA requires that derivatives clearing organization rules provide for the non-discriminatory clearing of swaps executed bilaterally or through an unaffiliated designated contract market or swap execution facility.

Pursuant to these provisions, the Commission has proposed § 1.71(d)(1) relating to FCMs and § 23.605(d)(1) relating to swap dealers and major swap participants. These regulations would prohibit swap dealers and major swap participants from interfering or attempting to influence the decisions of affiliated FCMs with regard to the provision of clearing services and activities and would prohibit FCMs from permitting them to do so. The Commission has also proposed § 23.607 to prohibit a swap dealer and major swap participant from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Act. The Commission has proposed § 39.12(b)(2) to require that derivatives clearing organization rules provide for the non-discriminatory clearing of swaps executed bilaterally or through an unaffiliated designated contract market or swap execution facility.

As discussed further below, the additional information collection burden arising from the proposed regulations primarily is restricted to the costs associated with the affected registrants' obligation to maintain records related to clearing documentation between the customer and the customer's clearing member.

The information collection obligations imposed by the proposed regulations are necessary to implement certain provisions of the CEA, including ensuring that registrants exercise effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs.

- 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 proposed regulations would be an important part of the Commission's regulatory program for swap dealers, major swap participants, futures commission merchants, and derivatives clearing organizations. The information required to be preserved would be used by representatives of the Commission to ensure compliance with the CEA and applicable Commission regulations.

- 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 regulations require that recordkeeping generally be performed in accordance with Commission regulation 1.31, which permits the use of electronic storage media.

- 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.**

Swap dealers and major swap participants are new categories of registrants under the Dodd-Frank Act. Accordingly, the required information is not already collected by the Commission for any other purpose. Additionally, the required information is not already collected by the Commission for any other purpose with respect to futures commission merchants or derivatives clearing organizations. It also is not 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.**

Failure to maintain the records required by the proposed regulations would adversely affect the

Commission's ability to ensure that swap dealers, major swap participants, futures commission merchants, and derivatives clearing organizations comply with their recordkeeping and documentation obligations under the CEA and Commission regulations and to ensure compliance with the mandatory clearing requirements of the CEA and Commission regulations. Failure to comply with the recordkeeping and requirements established by the proposed regulation would prohibit the Commission from ensuring that registrants exercise effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs.

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 sole reporting requirement contained in the proposed regulations is event-based.

- **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 proposed regulations do not impose a reporting requirement that would obligate a respondent 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;**

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the [CEA] or by [Commission] regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the five-year period. All such books and records shall be open to inspection by any representative of the commission or the United States Department of Justice.

- **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 proposed regulation 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. The proposed regulation 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. The proposed regulation 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.**

This question does not apply. In any event, the Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations 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.**

The Commission is affirmatively seeking comment from the public and from other federal agencies on the information collection requirements of the proposed regulations. The Commission has sought comment on the proposed rules generally as well as on the particular variables used to calculate the hourly burdens associated with the information collection. The Commission specifically has sought comment on the costs and benefits of the proposal. A copy of the proposed regulation as it will appear in the *Federal Register*, including the explicit solicitation of comment, is attached hereto.

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).

See response to question 8. The Commission is affirmatively seeking comment from the public and from other federal agencies on the information collection requirements of the proposed regulation. The Commission has sought comment on the proposed regulation generally as well as on the specific variables used to calculate the hourly burdens associated with the information collection. A copy of the proposed regulation as it will appear in the *Federal Register*, including the explicit solicitation of comment, is attached hereto.

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 decision to provide any payment or gift to respondents has been made.

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

If the proposed regulations are adopted, the Commission will protect proprietary information according to the Freedom of Information Act and the regulations that the Commission has promulgated to protect the confidentiality of collected information contained in 17 CFR 145, "Commission Records and Information." In addition, section 8(a) of the CEA provides for the confidentiality of data and information, except under the limited circumstances delineated therein. The Commission also is required to protect certain information pursuant to the Privacy Act of 1974.

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 proposed 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. The annual burden associated with these proposed regulations is estimated to be 16 hours, at an annual cost of \$1,600 for each FCM, SD, and MSP. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The Commission has characterized the annual costs as initial costs because the Commission anticipates that the cost burdens will be reduced dramatically over time as the documentation and procedures required by the proposed regulations become increasingly standardized within the industry.

Proposed §§ 1.72 and 23.608 would require each FCM, SD, and MSP to ensure compliance with the proposed regulations. Maintenance of contracts is prudent business practice and the Commission anticipates that SDs and MSPs already maintain some form of this documentation. Additionally, the Commission believes that much of the existing customer clearing documentation already complies with the proposed rules, and therefore that compliance will require a minimal burden.

In addition to the above, the Commission anticipates that FCMs, SDs, and MSPs will spend an average of 16 hours per year drafting and, as needed, updating customer clearing documentation to ensure compliance required by proposed §§ 1.72 and 23.608.

For each DCO, the annual burden associated with these proposed regulations is estimated to be 40 hours, at an annual cost of \$4,000. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The Commission has characterized the annual costs as initial costs as the Commission anticipates that the cost burdens will be reduced dramatically over time as once the documentation and procedures required by the proposed regulations are implemented, any additional expenditure related to § 39.12 likely would be limited to the time required to review and, as needed, amend, existing documentation and procedures.

Proposed 39.12(b)(7) would require each DCO to coordinate with clearing members to establish systems for prompt processing of trades. The Commission believes that this is currently a practice of DCOs. Accordingly, any additional expenditure related to § 39.12(b)(7) likely would be limited to the time initially required to review and, as needed, amend, existing trade processing procedures to ensure that they conform to all of the required elements and to coordinate with FCMs, SDs, and MSPs to establish reciprocal procedures.

The Commission anticipates that DCOs will spend an average of 20 hours per year drafting and, as needed, updating the written policies and procedures to ensure compliance required by

proposed § 39.12, and 20 hours per year coordinating with FCMs, SDs, and MSPs on reciprocal procedures.

The hour burden calculations below are based upon a number of variables such as the number of FCMs, SDs, MSPs, and DCOs in the marketplace and the average hourly wage of the employees of these registrants that would be responsible for satisfying the obligations established by the proposed regulation.

There are currently 134 FCMs and 14 DCOs based on industry data. SDs and MSPs are new categories of registrants. Accordingly, it is not currently known how many SD and MSPs will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective after July 16, 2011, the date on which the Dodd-Frank Act becomes effective. While the Commission believes there will be approximately 200 SD and 50 MSPs, it has taken a conservative approach, for PRA purposes, in estimating that there will be a combined number of 300 SDs and MSPs who will be required to comply with the recordkeeping requirements of the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is \$74.41. Because SDs, MSPs, FCMs, and DCOs include large financial institutions whose operations management employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these proposed regulations based upon an average salary of \$100 per hour.

Accordingly, the estimated hour burden was calculated as follows:

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for SDs and MSPs. This hourly burden arises from the proposed requirement that SDs and MSPs make and maintain records documenting compliance related to client clearing documentation.

Number of registrants: 300

Frequency of collection: as needed

Estimated number of annual responses per registrant: 1

Estimated aggregate number of annual responses: 300

Estimated annual hour burden per registrant: 16 hours

Estimated aggregate annual hour burden: 4,800 burden hours [300 registrants x 16 hours per registrant]

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for FCMs. This hourly burden arises from the proposed requirement that FCMs make and maintain records documenting compliance related to client clearing documentation.

Number of registrants: 134

Frequency of collection: as needed
Estimated number of annual responses per registrant: 1
Estimated aggregate number of annual responses: 134
Estimated annual hour burden per registrant: 16 hours
Estimated aggregate annual hour burden: 2,144 burden hours [134 registrants x 16 hours per registrant]

Drafting and Updating Trade Processing Procedures for DCOs. This hour burden arises from the time necessary to develop and periodically update the trade processing procedures required by the proposed regulations.

Number of registrants: 14
Frequency of collection: Initial drafting, updating as needed
Estimated number of annual responses per registrant: 1
Estimated aggregate number of annual responses: 14
Estimated annual hour burden per registrant: 40 hours
Estimated aggregate annual hour burden: 560 burden hours [14 registrants x 40 hours per registrant]

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.

See response to question 12 and Attachment A. The information collection required by the proposed regulations would not involve any capital or start-up capital or operations or maintenance costs as the Commission anticipates that swap dealers, major swap participants, futures commission merchants, and derivatives clearing organizations 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.**

It is not anticipated that the proposed regulations would 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 program changes or adjustments are necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act, which established a new regulatory scheme.

- 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 23 – Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants

OMB Collection File 3038-

Number of Registrants: 434 / 14

Frequency of Recordkeeping/Reporting: *See table below (daily, annually, or as needed)*

Estimated Average Burden Hours Per Registrant: 16 / 40

Estimated Aggregate Burden Hours: 6,944 / 560

Estimated Annual Cost Per Registrant: \$1,600 / \$4,000

Estimated Aggregate Annual Cost: \$694,400 / \$56,000

% of Responses Collected Electronically: 100%

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Annual Hour Burden Per Registrant	Estimated Aggregate Hour Burden	Estimated Annual Cost Per Registrant	Estimated Aggregate Annual Cost
<u>Recordkeeping</u> : Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance	434	Initial drafting, updating as needed	1	434	16	16 hours	6,944 hours	1,600	694,400
<u>Recordkeeping</u> : Drafting and Updating Trade Processing Procedures	14	At least once per counterpart y	1	14	40	40 hours	560 hours	4,000	56,000