



## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR – Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the

Commodity Futures Trading Commission (the “Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entry for OMB Control No. 3038-0079, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.<sup>1</sup> The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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<sup>1</sup> 17 CFR 145.9.

**FOR FURTHER INFORMATION CONTACT:** Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418-5496; email: *jchachkin@cftc.gov*, and refer to OMB Control No. 3038-0079.

**SUPPLEMENTARY INFORMATION:**

*Title:* Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards with Counterparties (OMB Control No. 3038-0079). This is a request for an extension of a currently approved information collection..

*Abstract:* Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to add sections 4s(h) and 4s(j)(5) (7 U.S.C. 6s(h) and (j)(5)) which provide the Commission with both mandatory and discretionary rulemaking authority to impose business conduct requirements on swap dealers (SDs) and major swap participants (MSPs) in their dealings with counterparties, including “Special Entities,”<sup>2</sup> and require that each SD and MSP implement conflicts of interest systems and procedures. Congress granted the Commission broad discretionary authority to promulgate business conduct requirements, as appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA.<sup>3</sup>

Accordingly, the Commission has adopted Subpart H of Part 23 of its regulations

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<sup>2</sup> Such entities are generally defined to include Federal agencies, States and political subdivisions, employee benefit plans as defined under the Employee Retirement Income Security Act of 1974 (ERISA), governmental plans as defined under ERISA, and endowments.

<sup>3</sup> See CEA Section 4s(h)(3)(D) (Business conduct requirements adopted by the Commission shall establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA.); see also Sections 4s(h)(1)(D), 4s(h)(5)(B) and 4s(h)(6).

(EBCS Rules) and Commission regulation 23.605,<sup>4</sup> requiring SDs and MSPs to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

In addition, the Commission recently finalized certain exceptions from the EBCS Rules for certain foreign swaps in § 23.23(e).<sup>5</sup> To the extent a swap dealer or major swap participant avails itself of one or more of these exceptions, when effective, § 23.23(h)(1) imposes information collection requirements in lieu of such requirements in the EBCS Rules.<sup>6</sup>

The recordkeeping and third-party disclosure obligations imposed by the regulations are essential to ensuring that SDs and MSPs develop and maintain procedures and disclosures required by the CEA and Commission regulations.<sup>7</sup>

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On July 20, 2020, the Commission published in the Federal Register notice of the proposed

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<sup>4</sup> 17 CFR Part 23, Subpart H and 17 CFR 23.605. Subpart H of Part 23 is titled “Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, Including Special Entities.” Subpart H includes the following provisions: § 23.400 (Scope); § 23.401 (Definitions); § 23.402 (General Provisions); § 23.410 (Prohibition on fraud, manipulation and other abusive practices); § 23.430 (Verification of counterparty eligibility); § 23.431 (Disclosures of material information); § 23.432 (Clearing disclosures); § 23.433 (Communications—fair dealing); § 23.434 (Recommendations to counterparties—institutional suitability); § 23.440 (Requirements for SDs acting as advisors to Special Entities); § 23.450 (Requirements for SDs and MSPs acting counterparties to Special Entities); and § 23.451 (Political contributions by certain SDs). § 23.605 is titled Conflicts of interest policies and procedures.

<sup>5</sup> 17 CFR Part 23.23(e). *See* Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924 (Sep. 14, 2020).

<sup>6</sup> 17 CFR Part 23.23(h)(1).

<sup>7</sup> Reporting under Commission regulation 23.451 (Political contributions by certain SDs) is optional and it is unknown how many registrants, if any, will engage in such reporting and how much burden, if any, will be incurred. Nevertheless, the Commission is providing an estimate of the regulation’s burden for purposes of the PRA below.

extension of this information collection and provided 60 days for public comment on the proposed extension, 85 FR 43821 (“60-Day Notice”). The Commission did not receive any relevant comment on the 60-Day Notice.

*Burden Statement:* The Commission is revising its estimate of the burden for this collection based on the current number of registered SDs.<sup>8</sup> The respondent burden for this collection is estimated to be as follows:

*Estimated Number of Respondents:* 109.

*Estimated Average Burden Hours Per Respondent:* 2352.9 hours.<sup>9</sup>

*Estimated Total Annual Burden Hours:* 256,470 hours.<sup>10</sup>

*Frequency of Collection:* Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September, 21, 2020.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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<sup>8</sup> Specifically, the change for the renewal is based solely on the increased number of entities registered as SDs (102 at the last renewal in 2017 and 109 as of September 9, 2020), since the burden hour per respondent remains the same, at approximately 2352.9 hours. The total annual burden estimate in the 60-Day Notice was based on 107 registered SDs, but, as noted above, this number has increased to 109. (And just as before, there are no entities currently registered as MSPs.)

<sup>9</sup> The Commission expects the paperwork burden of § 23.23(h)(1), where applicable, in relation to exceptions from the EBCS Rules in § 23.23(e) would be less than that of the EBCS Rules. However, in an effort to be conservative, because the Commission does not know how many swap dealers and/or major swap participants will choose to avail themselves of the exceptions in § 23.23(e) and for how many of their swaps, the Commission is not reducing the estimated burden of these rules to reflect the availability of such exceptions.

<sup>10</sup> The total annual burden estimated in the 60-Day Notice, at 251,765 hours, was based on 107 entities registered as SDs. (See also fn.8.) Since this number has increased to 109, the current total annual burden, at 256, 470 hours, reflects this increase.

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