



## 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, you may also submit a copy of all comments submitted to OIRA to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) through any of the following methods:

- *Online:* The CFTC Comments Portal, on the agency’s website, is available at <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>. You should submit 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 (“FOIA”), 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://comments.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 FOIA.

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

**FOR FURTHER INFORMATION CONTACT:** Dina Moussa, Special Counsel, 202-418-5696, [dmoussa@cftc.gov](mailto:dmoussa@cftc.gov), Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

**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<sup>2</sup> amended the Commodity Exchange Act (“CEA”) to add sections 4s(h) and 4s(j)(5),<sup>3</sup> 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>4</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>5</sup>

Accordingly, the Commission has adopted subpart H of part 23 of its regulations

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<sup>2</sup> Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> 7 U.S.C. 6s(h) and 6s(j)(5).

<sup>4</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>5</sup> See section 4s(h)(3)(D) of the CEA, 7 U.S.C. 6s(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) of the CEA; 7 U.S.C. 6s(h)(1)(D), 6s(h)(5)(B), and 6s(h)(6).

(“EBCS Rules”)<sup>6</sup> and § 23.605,<sup>7</sup> requiring SDs and MSPs to follow specified procedures and to 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.

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>8</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.<sup>9</sup> On July 6, 2023, the Commission published in the Federal Register notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 43085 (“60-Day Notice”). The Commission received no relevant comments on the 60-Day Notice.

*Burden Statement:* The current respondent burden for this collection is estimated to be as follows:

*Estimated Number of Respondents:* 105.<sup>10</sup>

*Estimated Average Burden Hours Per Respondent:* 2,352.9.

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<sup>6</sup> 17 CFR part 23, subpart H. Subpart H of part 23 (titled Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, Including Special Entities) 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 swap dealers acting as advisors to Special Entities); § 23.450 (Requirements for swap dealers and major swap participants acting counterparties to Special Entities); and § 23.451 (Political contributions by certain swap dealers).

<sup>7</sup> 17 CFR 23.605. Commission regulation 23.605 is titled *Conflicts of interest policies and procedures*.

<sup>8</sup> Reporting under § 23.451 (Political contributions by certain swap dealers) 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.

<sup>9</sup> 44 U.S.C. 3512; 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

<sup>10</sup> The Commission, at the 60-Day Notice stage, estimated that 106 respondents were subject to the information collection requirements at issue, 88 FR 43085 (Jul. 6, 2023), but has subsequently revised its estimate to 105 respondents, based on the current number of registered SDs.

*Estimated Total Annual Burden Hours: 247,059.*<sup>11</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 13, 2023.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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<sup>11</sup> The estimated total annual burden hours, at 247,059 hours, is revised from 249,412 hours reported in the 60-Day Notice, based on the current number of registered SDs (105 instead of 106).