

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038–0075, Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by requirements that swap dealers (“SDs”) and major swap participants (“MSPs”) with respect to the treatment of collateral by their counterparties to margin, guarantee, or secure uncleared swaps.

**DATES:** Comments must be submitted on or before July 11, 2017.

**ADDRESSES:** You may submit comments, identified by “Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy,” and OMB Control No. 3038–0075 by any of the following methods:

- The Agency’s Web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the Web site.
- **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.
- **Federal eRulemaking Portal:** <http://www.regulations.gov/>. Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

**FOR FURTHER INFORMATION CONTACT:** Gregory Scopino, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity

Futures Trading Commission, (202) 418–5175, email: [gsopino@cftc.gov](mailto:gsopino@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA,<sup>1</sup> Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.

**Title:** Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy (OMB Control No. 3038–0075). This is a request for an extension of a currently approved information collection.

**Abstract:** On November 6, 2013, the Commission issued final rules implementing statutory provisions pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and imposing requirements on SDs and MSPs with respect to the treatment of collateral posted by their counterparties to margin, guarantee, or secure uncleared swaps.<sup>2</sup> Additionally, the final rule includes revisions to ensure that, for purposes of subchapter IV of chapter 7 of the Bankruptcy Code, securities held in a portfolio margining account that is a futures account or a Cleared Swaps Customer Account constitute “customer property”; and owners of such accounts constitute “customers.”<sup>3</sup> Section 4s(l) of the CEA sets forth certain requirements concerning the rights of counterparties of SDs and MSPs with respect to the segregation of money, securities, or other property used to margin, guarantee, or otherwise secure uncleared swaps. Regulation 23.701

implements part of the new statutory requirements by specifying that certain information must be provided to counterparties about the terms and conditions of segregation, including price information, to the extent that the SD or MSP has such information, and the identity of one or more independent depositories for segregated collateral. Regulation 23.704 implements the requirements of CEA Section 4s(l)(4), which dictates that, in certain circumstances, an SD or MSP must report to the counterparty, on a quarterly basis, “that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”

As discussed above, the rules establish reporting and recordkeeping requirements that are mandated by Section 4s(l) of the CEA, which states that SDs and MSPs must notify their counterparties of the right to have their initial margin segregated and to maintain the confirmations and elections related to such notices as business records. The reporting and recordkeeping requirements are necessary to implement the objectives of Section 4s(1). For example, the information received by uncleared swap counterparties pursuant to Regulation 23.701 would alert counterparties to their statutory right, if they so choose, to have funds or property used as margin in uncleared swaps transactions with SDs and MSPs kept segregated from the property of the SD or MSP. Likewise, the information provided would further alert counterparties of the need to request such segregation if they wish to exercise this right. Similarly, the information received by uncleared swap counterparties pursuant to Regulation 23.704 would be used to confirm that the back office procedures followed by a SD or MSP with whom they are dealing comply with the agreement of the parties.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

<sup>1</sup> 44 U.S.C. 3501 *et seq.*

<sup>2</sup> 78 FR 66621.

<sup>3</sup> *Id.*

- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://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, 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>4</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 <http://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 information collection request 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.

**Burden Statement:** The Commission is revising its estimate of the burden for this collection to reflect the current number of registered SDs and MSPs. Accordingly, the respondent burden for this collection is estimated to be as follows:

*Number of Registrants:* 102.

*Estimated Average Burden Hours per Registrant:* 3,406.

*Estimated Aggregate Burden Hours:* 347,412.

*Frequency of Reporting:* As applicable.

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

Dated: May 9, 2017.

**Robert N. Sidman,**

*Deputy Secretary of the Commission.*

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**BILLING CODE 6351-01-P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Supervisory Highlights: Spring 2017

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** *Supervisory Highlights*; notice.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau or CFPB) is issuing its fifteenth edition of its *Supervisory Highlights*. In this issue of *Supervisory Highlights*, we report examination findings in the areas of mortgage servicing, student loan servicing, mortgage origination, and fair lending. As in past editions, this report includes information about a recent public enforcement action that was a result, at least in part, of our supervisory work. The report also includes information on recently released examination procedures and Bureau guidance.

**DATES:** The Bureau released this edition of the *Supervisory Highlights* on its Web site on April 26, 2017.

**FOR FURTHER INFORMATION CONTACT:** Adetola Adenuga, Consumer Financial Protection Analyst, Office of Supervision Policy, 1700 G Street NW., 20552, (202) 435-9373.

#### SUPPLEMENTARY INFORMATION:

##### 1. Introduction

The Consumer Financial Protection Bureau is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. The Bureau supervises both bank and nonbank institutions to help meet this goal. In this fifteenth edition of *Supervisory Highlights*, the CFPB shares recent supervisory observations in the areas of mortgage servicing, student loan servicing, mortgage origination, and fair lending. In particular, we describe key new developments around spike and trend monitoring, service provider examinations, and production incentives. The findings reported here reflect information obtained from supervisory activities that were generally completed between September 2016 and December 2016 (unless otherwise stated). Corrective actions regarding certain matters may remain in process at the time of this report's publication.

CFPB supervisory reviews and examinations typically involve assessing a supervised entity's compliance management system and compliance with Federal consumer financial laws. When Supervision examinations determine that a supervised entity has violated a statute

or regulation, Supervision directs the entity to implement appropriate corrective measures, such as implementing new policies, changing written communications, improving training or monitoring, or otherwise changing conduct to ensure the illegal practices cease. Supervision also directs the entity to send consumers refunds, pay restitution, credit borrower accounts, or take other remedial actions. Recent supervisory resolutions have resulted in total restitution payments of approximately \$6.1 million to more than 16,000 consumers during the review period. Additionally, CFPB's recent supervisory activities have either led to or supported five recent public enforcement actions, resulting in over \$39 million in consumer remediation and an additional \$19 million in civil money penalties.

Please submit any questions or comments to [CFPB\\_Supervision@cfpb.gov](mailto:CFPB_Supervision@cfpb.gov).

##### 2. Supervisory Observations

Recent supervisory observations are reported in the areas of mortgage origination, mortgage servicing, student loan servicing, and fair lending.

###### 2.1 Mortgage Origination

###### 2.1.1 Observations and Approach to Compliance With the Ability To Repay (ATR) Rule Requirements

Prior to the mortgage crisis, some creditors offered consumers mortgages without considering the consumer's ability to repay the loan, at times engaging in the loose underwriting practice of failing to verify the consumer's debts or income. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to provide that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, as well as all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.<sup>1</sup> The Dodd-Frank Act also amended TILA by creating a presumption of compliance with these ability-to-repay (ATR) requirements for creditors originating a specific category

<sup>1</sup> Section 1411 of the Dodd-Frank Act, Public Law 111-203, adding section 129C(a) to TILA, codified at 15 U.S.C. 1639c(a).

<sup>4</sup> 17 CFR 145.9.