

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0021

### 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.

The Commodity Futures Trading Commission ("Commission") has established minimum disclosure requirements to ensure that customers of futures commission merchants ("FCMs") are fully aware of the treatment under United States bankruptcy law of any non-cash property deposited with an FCM to margin a futures contract in the event that the FCM must be liquidated in bankruptcy. FCMs are not required to provide the bankruptcy information to certain categories of customers who are financially sophisticated and thus would generally be aware of this information. The requirements for notification to the Commission of transfers made after the filing of a bankruptcy petition are necessary because the Commission must receive notice of all bulk transfers effected post-bankruptcy in order to preserve its ability to disapprove of such transfers.

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 principal beneficiaries of the information required to be disclosed under this rule are the users of the futures markets who benefit from the disclosure of relevant information. The rules do not require disclosure to certain categories of financially sophisticated customers who would generally be aware of the information contained in such statements and thus for whom the information would be duplicative.

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 rules do not currently allow for electronic delivery.

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 Commission has previously amended its risk disclosure rules in order to consolidate disclosure statements and eliminate the requirement that customers provide a signed statement

acknowledging receipt of the bankruptcy statement, thereby reducing duplicative disclosure requirements and easing administrative burdens on FCMs. (See 58 Fed. Reg. 17495 (April 5, 1993) and 59 Fed. Reg. 34376 (July 5, 1994)). The rules streamlined disclosure burdens by eliminating the requirement that FCMs provide the mandated disclosure statements to categories of customers whose financial sophistication and knowledge would render the information contained in these statements duplicative. (See 63 Fed. Reg. 8566 (February 20, 1998)).

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-I), describe the methods used to minimize burden.

The collection of information does not include small entities.

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

Users of the markets are the primary beneficiaries of the disclosure requirement. The rule only requires that the mandated statement be provided to a customer once before the FCM can accept the deposit of non-cash property from the customer as margin. The rule reduces any burden associated with this disclosure obligation by not requiring disclosure to certain categories of customers for whom the information is likely to be duplicative. Further reduction in the disclosure obligation could result in other customers not having important information concerning the risks associated with depositing non-cash property as margin with an FCM.

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 rule in question does not require the respondent to report any information to the Commission more often than quarterly.

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

Respondents are not required to prepare any written responses.

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

Respondents are not required 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 disclosure rules relieve respondents of the obligation of providing certain defined categories of financially sophisticated customers with the bankruptcy statement. Respondents may maintain certain records in order to demonstrate compliance with this rule.

- 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 rule does not involve a statistical survey.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The rule does not involve use of statistical data.

- 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

The rule does not involve 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 rule does not involve submission of proprietary trade secrets or other information to the Commission. For enforcement purposes, Commission Rule 1.31 requires that:

All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

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 C.F.R. 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.

A copy of the Federal Register notice soliciting comments on this information collection (73 FR 52331, September 9, 2008) is attached. [No comments were received.]

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.

The Commission continues to consult with industry members to assure that the requirements of this information collection are understood and to evaluate at the staff level the usefulness of the data.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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 occur.

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.

This question does not apply.

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.

None of the regulations require the giving 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 costs of the hour burdens associated with the disclosure rules are between \$10 and \$25 per hour. With a total burden of 248 hours, the average annual cost is \$4340.00. The disclosure rules require respondents to provide customers with a standard, Commission-mandated statement. This task can be performed by clerical employees. If a customer has questions concerning the statement, a professional level employee would need to respond.

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 startup 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.

This question does not apply.

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.

With respect to the Commission, the costs associated with the disclosure requirements described herein are inseparable from the costs of running the bankruptcy program as a whole. There are no expenses that are exclusively attributable to the paperwork burden.

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

The downward adjustments reported in Items 13 and 14 reflect a reduced number of FCMs to which the regulations apply.

16. For collection of information whose results are planed 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

## #3038-0021 - REGULATIONS GOVERNING BANKRUPTCIES OF COMMODITY BROKERS

REGULATION	ESTIMATED # OF RESPONDENTS OR RECORDKEEPERS PER YEAR	REPORTS ANNUALLY BY EACH RESPONDENT	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
190.06(b) – (FCM NOTIFICATION RE CERTAIN ACCOUNT TRANSFERS FOLLOWING BANKRUPTCY)	1.00	1.00	1.00	0.5	0.50
190.10(c) – (COMMODITY BROKER DISCLOSURE STATEMENT)	150	8.00	1200	0.05	60
190.06(d) and 190.04(e)(1) (FCM RECORDKEEPING)	150	25.00	3750	0.05	187.50
GRAND TOTAL	301		4951	0.20	248