

SUPPORTING STATEMENT FOR RENEWAL OF INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0024

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 is the independent federal regulatory agency charged with providing various forms of customer protection so that users of the commodity markets can be assured of the financial integrity of the markets and the intermediaries that they employ in their trading activities. Part 1 of the Commission's regulations requires, among other things, that commodity brokers – known as futures commission merchants (FCMs) comply with minimum capital requirements. In order to monitor compliance with these financial standards, the Commission has required FCMs to file financial monthly reports with the Commission and with the designated self-regulatory organization of which they are members as well as to report to the Commission should capital levels drop below prescribed minimums. (See Commission Rules 1.10, 1.12, 1.15, 1.16 and 1.17, 17 CFR 1.10, 1.12, 1.15, 1.16 and 1.17.)

In June of 2008, the US Congress passed the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, 2189-2204 (2008), also known as the Farm Bill. The Farm Bill provided the CFTC with new authority with regard to the regulation of off-exchange retail forex transactions. Among other things, it directed the Commission to draft rules effectuating registration provisions for a new category of registrant – the retail foreign exchange dealer, or RFED. Under the terms of the legislation, RFEDs will be subject to the same capital requirements as FCMs that are engaged in retail forex transactions, and therefore subject to the same reporting requirements. Accordingly, this collection has been amended to reflect the financial reporting requirements of the new category of registrant, RFEDs. However, because most, if not all, of the entities expected to register as RFEDs are currently registered as FCMs, the overall burden has not changed under this collection. Rather, a portion of the burden has shifted from FCMs to RFEDs.

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.

Financial statements are submitted to the Commission and the DSROs of which FCMs and RFEDs are members, for the purpose of ensuring that filers are meeting their obligations as a registrant.

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 Commission's procedures enable FCMs and RFEDs to comply with the Rule 1.10 filing requirement by submitting electronic filings to their DSRO, with copies provided to the Commission. Much of the information required is included as schedules to such electronic filings.

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.

See responses to questions 1 and 2.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), describe the methods used to minimize burden.

Information required under the regulation does not involve any small business 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.

Without frequent reporting the Commodity Futures Trading Commission would be unable to adequately monitor FCM and RFED compliance with financial standards or to provide timely customer protection which assures users of the financial integrity of the intermediaries that they employ in their forex trading activities.

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;

See responses to questions 1, 2 and 6.

- 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;

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;

This question does not apply.

- 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 proposed regulation does not involve a statistical survey.

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

The proposed regulation does not involve the 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 agency has procedures to protect the information's confidentiality. These are set forth in 17 CFR Parts 145 and 147.

- 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 agency has procedures to protect the information's confidentiality. These are set forth in 17 CFR Parts 145 and 147.

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.

A copy of the proposed new and amended rules, which includes a discussion of the effect on associated collections, has been submitted to the Federal Register for publication and public comment. They have not yet been published.

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.

This question does not apply at this time. The proposed rules will be published in the Federal Register and the Commission will seek public comment on this and other collections associated with the new and amended rules.

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.

This question does not apply.

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, regulation, or agency policy.

The Commission has provided no assurance of confidentiality beyond that provided by the agency's Freedom of Information Act regulations, set forth at 17 CFR Part 145, and its Government in the Sunshine Act regulations, set forth at 17 CFR Part 147.

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.

The proposed regulation does not 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 OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burden 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. Depending on the technical expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$25 per hour.

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 factor 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.

The proposed renewal requires no new start-up or operations and maintenance costs those entities expected to register as RFEDs are currently registered as FCMs, and presently required to comply with parallel reporting obligations. See Attachment A.

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.

The primary costs for reviewing documents under the existing OMB Collection 3038-024 are the salaries and benefits for attorneys and auditors to analyze the information collected. The proposed renewal should not add to these existing costs, because the information collected is of the same type and amount as the existing collection.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

The proposed renewal reflects changes to the registration categories, as a result of changes in Part 1 of rules. This is reflected in the burden.

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 83-1.

This question does not apply.

Attachment A

Collection 0038-0024 – Regulations and Forms Pertaining to Financial Integrity of the Market Place.

REGULATION OMB COLLECTION #3038-0024	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
<u>REPORTING</u>					
1.10 FINANCIAL REPORTING BY REGISTRANTS					
FCMs	127	12	1,524	2.75	4191
IBs	513	2	1,026	1	1026
1.10 APPLICANTS FOR REGISTRATION AS FCMS AND IBS FILING FINANCIAL REPORTS					
	568	1	568	1	568
1.12(a) & (b) - REPORTING BY FCMs/IBs WHO FAIL TO MEET MINIMUM FINANCIAL REQUIREMENTS OR WHOSE CAPITAL IS BELOW EARLY WARNING LEVEL					
FCM	12	1	12	1	12
IB	11	1	11	1	11
1.15(a)(1) - INITIAL FILING OF ORG CHART, RISK MANAGEMENT POLICIES & NON-CUSTOMER ACCT INFORMATION					
	23	1	23	2	46
1.15(a)(2) – ANNUAL RISK ASSESSMENT FILING REQUIREMENTS					
	54	1	54	2	108
1.16(e) - WHERE IND. PUBLIC ACCOUNTANT (CPA) FINDS MATERIAL INADEQUACY IN ACCOUNTING SYSTEM, HE MUST NOTIFY EXCHANGE AND COMMISSION					
	5	1	5	2	10
1.16(f) - REQUEST BY FCM FOR EXTENSION OF TIME TO FILE AUDITED REPORT					
	8	1	8	2	16

1.17(c)(6) – ELECTION OF ALTERNATIVE CAPITAL DEDUCTIONS

FCM	8	18	144	0.5	72
IB	0	0	0	0	0

1.17(h)(3)(vi) - FILING OF SUBORDINATION AGREEMENTS WITH THE COMMISSION AND EXCHANGES

FCM	41	3	123	0.5	61.5
IB	23	1	23	0.5	11.5
RFED	15	3	45		0

1.18(b) – PREPARING MONTHLY CAPITAL COMPUTATION

FCM	0	0	0	0	0
IB	0	0	0	0	0

SUBTOTAL REPORTING REQUIREMENTS

	1,408		3,566.0		6,133.0
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RECORDKEEPING

1.14 - FCM TO MAINTAIN RECORDS RE: MATERIAL AFFILIATES

	89	1	89	3	267
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1.20(a) - FCM OPENING ACCOUNTS FOR DEPOSITING SEGREGATED FUNDS MUST KEEP ACKNOWLEDGMENT THAT ACCOUNT CONTAINS CUSTOMER FUNDS

	74	5	370	0.75	277.5
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1.20(b) - SAME AS 1.20(a) BUT FOR CLEARING ORGANIZATION OPENING ACCOUNT

	6	5	30	0.75	22.5
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1.23; 1.32; AND 30.7 - DAILY COMPUTATION OF AMOUNTS TO BE SEGREGATED AND SET ASIDE FOR CUSTOMERS TRADING ON U.S. and NON-U.S. COMMODITY MARKETS

	120	200	24,000	0.5	12000
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1.26 - NUMBER OF
ACKNOWLEDGMENTS
TO BE OBTAINED FROM
SEGREGATED
DEPOSITORIES BY FCMs
FOR CUSTOMERS'
FUNDS

80 2 160 0.75 120

1.27 - RECORD OF
INVESTMENTS OF
CUSTOMERS' FUNDS
KEPT BY FCMS AND
CLEARING
ORGANIZATIONS

80 1 80 10 800

1.36(a) - RECORD OF
SECURITIES RECEIVED
FROM CUSTOMERS TO
MARGIN ACCOUNTS

59 1 59 3 177

1.37 - RECORD OF
CUSTOMERS' NAMES,
ADDRESSES AND
OCCUPATIONS;
ACCOUNT
CONTROLLERS OR
GUARANTORS; AND
RECORD OF OPEN LONG
AND SHORT POSITIONS
IN ACCOUNTS CARRIED
FOR OTHER FCMs

132 1 132 10 1320

1.49 - DENOMINATION OF
CUSTOMER FUNDS AND
LOCATION OF
DEPOSITORIES

104 100 10,400 0.01 104

1.65 - NOTICE OF
ACCOUNT TRANSFERS

8 1 8 1 8

1.68 - CUSTOMER
AGREEMENT OPTING
OUT OF SEGREGATION

0 250 0 0.02 0

**SUBTOTAL
RECORDKEEPING
REQUIREMENTS**

752 35,328.00 15,096.00

**TOTAL REPORTING AND
RECORDKEEPING**

2,160 38,894.00 21,229.00