

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS
OMB CONTROL NUMBER 3038-NEW**

- 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 (“CFTC” or “Commission”) is proposing rule 16.03¹ via a notice of proposed rulemaking (“NPR”). Proposed regulation 16.03 would result in a new collection of information requirement within the meaning of the Paperwork Reduction Act (“PRA”). The Commission is therefore submitting the proposal for regulation 16.03 to OMB for review. The title for the proposed collection of information requirement is “Regulation 16.03 – Ownership and control report” (OMB control number 3038-NEW).

Under proposed regulation 16.03, U.S. futures exchanges and other reporting entities (“reporting entities”) would be required to provide to the Commission certain ownership, control, and related information on a weekly basis for all trading accounts active on the reporting entity.² This information will be used to enhance market transparency; increase the Commission’s trade practice and market surveillance capabilities; leverage existing surveillance systems and data; and facilitate Commission enforcement and research programs.

The Commission’s need for ownership and control information reflects fundamental changes in the technology, products, and platforms of U.S. futures trading. DCMs, in particular, have undergone a decade-long transition from geographically-defined trading pits to global electronic platforms. In the ten years between 2000 and 2009, electronic trading grew from approximately 9 percent to approximately 81 percent of volume on all U.S. DCMs. Over the same time period, the number of actively-traded futures and options contracts listed on U.S. exchanges increased more than seven fold, from 266 contracts in 2000 to 1,866 contracts in 2009.³ Most importantly, total DCM futures and options trading volume rose from approximately 594.5 million contracts in 2000 to approximately 2.78 billion in 2009, an increase of over 368%.⁴

¹ 17 CFR 16.03.

² “Reporting entities” are defined broadly to include any registered entity required to provide the Commission with trade data on a regular basis, where such data is used for the Commission’s trade practice or market surveillance programs. At present, reporting entities would include designated contract markets (“DCMs”), derivatives transaction execution facilities (“DTEFs”) and exempt commercial markets with significant price discovery contracts (“ECM SPDCs”). In addition, should the Commission adopt the proposed rule, it would also collect ownership and control information from foreign boards of trade (“FBOTs”) operating in the U.S. pursuant to staff direct access no-action letters if such letters are conditioned on the regular reporting of trade data to the Commission.

³ Based on fiscal years 2000 and 2009, as reported in the Commission’s *FY 2009 Performance and Accountability Report*, p.14.

⁴ In addition, futures and options trading volume reached a peak of approximately 3.37 billion contracts traded in 2008, an increase of over 466% compared to the year 2000.

Volume growth and changes in trading technology have coincided with equally important developments in the business of futures trading. One development of significant regulatory consequence is the growing economic integration between DCM contracts and their equivalents traded on exempt commercial markets (“ECMs”) or other DCMs. Such linkages present both new trading opportunities and new challenges for the Commission and exchanges. In particular, both must be vigilant that trading in one market is not used to distort another, or to facilitate abusive trading practices across markets. The Commission’s role with respect to such linked contracts is especially vital, as it is best equipped to collect regulatory information from competing exchanges and conduct surveillance of linked contracts across markets.

A second development of regulatory consequence is the increased dispersion and opacity of market participants as U.S. exchange floors are replaced by a broader, global customer base. Whereas the Commission once monitored trading via on-site surveillance of open-outcry pits, today surveillance is primarily electronic and data-driven. Paradoxically, while electronic trading has conferred important informational advantages, including improved audit trails, the concomitant increases in trading volumes, products offered, and trader dispersion and anonymity have created equally important regulatory challenges. Foremost among these is scale. Effective surveillance of millions of daily records—an average of approximately 2.9 million trades per day in December 2009—requires automated systems capable of intelligently searching for patterns and anomalies buried deep within the data. Crucially, it also requires comprehensive data streams with sufficient reference points to uncover relationships where none appear to exist, and to analyze information based on desired criteria. The proposed ownership and control report (“OCR”) helps both the Commission and self-regulatory organizations accomplish these tasks by adding account control, account ownership, and common control or ownership as new reference points for trade practice and market surveillance programs.

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 Commission has worked diligently to modernize its automated surveillance systems and to upgrade the data sources available for those systems. In many cases, the Commission already receives the information it requires for effective regulation, including large trader reports for market surveillance and exchange trade registers for trade practice surveillance.⁵ The proposed OCR is intended to integrate these existing

⁵ “Trade register” is a generic term for a comprehensive, daily record of every trade facilitated by an exchange, whether executed on the centralized market (via open-outcry or electronically) or off of it (*e.g.*, block trades and exchange of futures for swaps). Trade registers contain detailed information with respect to the terms of a trade (*e.g.*, contract, price, quantity, *etc.*), the parties involved, and other data points. They also contain trading account numbers, but no information with respect to the owners or controllers of those accounts. In addition, the trading account numbers in trade registers often do not correspond to account numbers reported to other Commission data systems, including its large trader reporting system. The Commission has recently standardized the content and format of all trade registers submitted to it, which are now required to be FIXML Trade Capture Reports. The Commission notes that OCR reporting requirements will be triggered by the regular reporting of trade data for use in the Commission’s trade practice or market surveillance programs, regardless of whether such data is deemed a “trade register” by the entity providing it.

resources, and leverage them in dynamic new ways. As explained below, it would improve the Division of Market Oversight's ("DMO") detection and deterrence capabilities with respect to specific trade practice violations and market abuses. It would also help bridge the gap between individual transactions reported to the Commission on exchange trade registers and aggregate positions reported to it in large trader data.

The OCR would allow the Commission's Division of Enforcement ("DOE") and its Office of Chief Economist ("OCE") to better and more efficiently utilize regulatory data in support of their own missions. In addition, it would increase market transparency and respond to new regulatory data needs in an era of predominantly electronic trading. In short, the proposed OCR reflects the Commission's belief that its traditional data resources—exchange trade registers and large trader reports—must be expanded. Accordingly, the Commission proposes to supplement those resources with ownership and control information for all trading accounts.

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 data would be submitted electronically.

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.**

Information of the type that is required under proposed rule 16.03, if adopted, will not be duplicative of information acquired by the Commission through other means. Currently, the Commission does not routinely collect ownership and control information for all trading accounts. Some comments received in response to the July 2, 2009, Advanced Notice of Proposed Rulemaking ("ANPR")⁶ argued that the OCR is a "largely duplicative report" when compared to the Form 102.⁷ [The Form 102, titled "Identification of Special Accounts," is part of the Commission's large-trader reporting system. The Form 102 must be filed by FCMs, clearing members and foreign brokers who carry special accounts. Special accounts are accounts that reach large-trader reportable position levels in a particular product, these levels are established by the Commission.] The Commission notes that while its objectives do include improved position surveillance, they also include improved trade surveillance—regardless of position size—and other regulatory goals not met by information provided via the Form 102. Indeed, the proposed OCR creates a new category of surveillance data that will benefit any regulatory effort focused on trades and trading behavior by account owners and controllers within and across reporting entities. The Commission believes that such information is vital for effective oversight of the U.S. futures markets.

⁶ 74 FR 31642 (July 2, 2009).

⁷ CME Group Inc. Comment Letter at 4.

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

While reporting entities which are not small businesses are responsible for providing the OCR, the Commission is nonetheless aware that root data sources may be required to supply reporting entities with certain OCR data.⁸ However, the Commission is not collecting information directly from the root data sources nor is it estimating their reporting burden under the Paperwork Reduction Act.

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.

The Commission regulates the trading of commodity futures and options contracts that impact a vast array of commodity prices vital to national and international commerce. If the collection were conducted less frequently the Commission may not be able to identify related accounts as rapidly and abusive trading practices between the related accounts may persist and potentially impact market prices.

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 Commission regulates the trading of commodity futures and options contracts that impact a vast array of commodity prices vital to national and international commerce. If the collection were conducted less frequently the Commission may not be able to identify related accounts as rapidly and abusive trading practices between the related accounts may persist and potentially impact market prices.

- **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 a written response.

- **Requiring respondents to submit more than an original and two copies of any document.**

Respondents are required to submit only a single copy to the Commission.

- **Requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years.**

Section 5(d)(17) of the Commodity Exchange Act requires DCMs to maintain records of all activities related to the business of the market in a form and manner acceptable to the Commission for a period of five years. 7 U.S.C. 7(d)(17).

⁸ Root data sources may include FCMs, CPOs, CTAs, and IBs.

Section 5a(d)(9) of the Commodity Exchange Act requires DTEFs to maintain records of all activities related to the business of the market in a form and manner acceptable to the Commission for a period of five years. 7 U.S.C. 7a(d)(8).

Section 2(h)(5)(B)(ii) of the Commodity Exchange Act specifies that ECMs retain business and operational records for 5 years and make such records available to the Commission for inspection upon request.

For the purpose of enforcing the provisions of the Act and the Commission's regulations thereunder, Commission rule 1.31 (17 CFR § 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."

- **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.**

Proposed regulation 16.03 does not involve statistical surveys.

- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB.**

Proposed regulation 16.03 does not involve statistical data classifications.

- **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.**

Proposed regulation 16.03 does not directly involve any pledge of confidentiality regarding the collection of data (please see answer to question 10).

- **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 proposed rule could require the submission of transactional and commercial data that may involve confidential information or proprietary trade secrets. The Commission will protect sensitive information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, the Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public

“data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.”

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 notice of proposed rulemaking is attached for OMB’s review. It has been submitted for publication (but not yet published) in the Federal Register.

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).

Opportunity for public comment is provided when regulations are initiated or amended. Contact with derivatives markets is maintained on a continuous and ongoing basis to resolve reporting problems and address concerns. The Commission has, and plans to continue, to solicit comments through publication of proposed rules in the Federal Register. The Commission will also, on an ongoing basis, solicit public comments through the notice required by 5 CFR 1320.8(d).

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.

No such circumstances are anticipated.

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.**

The Commission does not provide the respondents with an assurance of confidentiality, only to the extent permitted by law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.”

- 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.**

This question does not apply.

- 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.**

As discussed above, under proposed regulation 16.03, reporting entities, a term which as proposed would include ECM SPDCs, DTEFs, and DCMs, would be required to provide ownership and control reports to the Commission on a weekly basis. Such reports would include ownership, control and related information for each account active on the reporting entity.

Staff’s estimates are based on the manpower and time expenditures required to load and maintain data in the Commission’s regulatory data systems. Reporting

entities will submit their ownership and control reports to the Commission using a new reporting standard (FIXML).

Staff's estimates are averages across reporting entities. Staff has separated burden hours and costs into two separate phases. The first phase involves establishing a data stream to the Commission and requires that initial one-time burden hours be expended by reporting entities (covered in response to question 13). The second phase involves maintaining the data stream from the reporting entity to the Commission on a weekly basis (covered in response to this question).

In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2008 by the Securities Industry and Financial Markets Association (2008 Report). Unless stated otherwise, Commission staff used a composite (blended) wage rate by averaging the mean annual salaries of a Compliance Manager and a Programmer as published in the 2008 Report, and divided that figure by 1800 annual working hours to arrive at the hourly wage rate of \$51. In order to account for inflation since 2008, that hourly wage rate has been multiplied by a factor of 1.08 (an increase of 8%) to arrive at the hourly wage rate of \$55.08 for the purpose of conducting the cost analysis required in this supporting statement. Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information. It is important to note that although the hourly wage referenced above does take bonuses into account, it does not consider certain variables such as employee benefits which can increase the cost of labor.

Once the OCR is developed and implemented, Commission staff estimates that each reporting entity would expend 33 hours for each weekly OCR transmitted to the Commission. The 33 hours per week includes the hours expended to interact with compliance staff in the Division of Market Oversight and staff in the Commission's Office of Information and Technology Services.

It is estimated that 1 ECM SPDC and 16 DCMs will be providing this data on a continuing basis.⁹ As mentioned above, reporting entities would each expend an estimated 33 hours per week for providing the OCR to the Commission on a weekly basis. This results in an aggregate burden of approximately 29,172 hours (17 reporting entities x 52 weeks x 33 hours) and an aggregate cost of \$1,606,793.76 (29,172 hours x \$55.08 per hour) annually.

- 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**

⁹ As of June 28, 2010, all eight recognized SPDCs were trading on the same ECM.

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.**

For the cost calculation of the first phase (initial start-up phase), Commission staff used a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, and a Programmer (Senior), as published in the 2008 Report, and divided that figure by 1800 annual working hours to arrive at the hourly wage rate of \$80.75. In order to account for inflation since 2008, that hourly wage has been multiplied by a factor of 1.08 (an increase of 8%) to arrive at the hourly wage rate of \$87.21 for the purpose of conducting the cost analysis required in this Supporting Statement. Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information. It is important to note that although the hourly wage referenced above does take bonuses into account, it does not consider certain variables such as employee benefits which can increase the cost of labor.

The burden hours associated with the first phase of the collection of information involve discussions with staff and representatives of other reporting entities and root data sources to develop and implement the OCR process. Reporting entities will also have initial burden hours associated with establishing the required information technology infrastructure. Commission staff estimates that the start-up burden will be 6,156 hours per reporting entity. At a wage rate of \$87.21 per hour, the total labor cost would be \$536,864.76 (6,156 X \$87.21) per reporting

entity. Annualized over an expected useful life of 10-years, each reporting entity would be expected to expend 615.6 hours (6,156 hours/10 years) at a cost of \$53,686.48 per annum over a ten-year period.

It is estimated that up to 17 reporting entities (16 DCMs and 1 ECM SPDC) will incur such costs. Accordingly, the aggregated annualized hours expended by all reporting entities would be 10,465.2 hours (615.6 hours x 17) at a cost of about \$912,670.16 (\$53,686.48 x 17 or 10,465.2 x \$87.21) per annum over a 10-year period.

Start-up and continuing capital costs may also involve product and service purchases. Commission staff estimates that reporting entities could expend up to \$8,000 annually per reporting entity on product and service purchases to comply with proposed regulation 16.03. This results in an aggregated cost of \$136,000 per annum (17 reporting entities x \$8,000).

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 Commission estimates that staff would expend 160 hours per reporting entity to establish the data flow covered by proposed regulation 16.03. At an average salary rate of \$55 per hour for a full-time employee, the Commission estimates that the cost to the government would be \$8,800 per reporting entity. Annualized over a useful life span of 10 years, the cost would be \$880 per reporting entity. Assuming the presence of 17 reporting entities, the aggregated annualized cost would be \$14,960 over a 10-year period.

In addition to the cost incurred to establish the data flow, Commission staff estimates that 2 hours would be expended per week by Commission staff to maintain the data flow from each reporting entity. Assuming the presence of 17 reporting entities and 52 weeks over a 12-month period, the Commission estimates that the Commission would expend 1,768 hours (2 x 17 x 52) annually to maintain the data flow generated by proposed regulation 16.03 at a cost of \$97,240 annually (1,768 x \$55).

Finally, the Commission estimates that approximately 20 Commission staff members will expend approximately 1 hour per day over 250 days to analyze the information provided by proposed regulation 16.03. Staff would use the information submitted under proposed regulation 16.03 to, among other things, conduct trade practice surveillance activities, surveil and investigate markets for price distortions, identify manipulative conduct, and categorize market participants.

At an average salary rate of \$55 per hour for a full-time employee, the Commission estimates that the cost to the government would be \$275,000 annually (20 staff members x 1 hour per day x 250 trading days x \$55 per hour).

The Commission notes that many of the hours Commission staff will expend to analyze the information provided by the proposed regulation are already accounted for in OMB Collection 3038-0061.¹⁰ The ownership and control information to be provided under the proposed collection will, among other things, significantly enhance and supplement the daily trade data provided via OMB Collection 3038-0061. Consequently, the hours spent analyzing data provided via OMB Collection 3038-0061 will simultaneously be spent analyzing complementary data provided via the proposed OCR data collection. It should also be noted that while these two data collections will typically be used in conjunction with one another, each is a separate and distinct data feed provided in accordance with two separate and distinct regulations.

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

This question does not apply because this statement is provided in support of a request for a new OMB control number.

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-I.

There are no exceptions to the certification statement. The Commission is able to certify compliance with the provisions of 5 CFR 1320.9.

¹⁰ In the supporting statement for Collection 3038-0061 the Commission estimated that approximately 20 Commission staff members would expend approximately 8 hours per day over 250 days to analyze the information provided by proposed regulation 16.02.

Attachment

Table 1 (Question 12)

Regulation 16.03 – Ownership and control report (“OCR”)

a	b	c	d	e ¹¹	f	g ¹²
Type of Respondent	Estimated Number of Respondents	Report or Record	Average Reports Annually by Each Respondent	Total Annual Responses	Estimated Number of Hours Per Response	Annual Burden in Fiscal Year
Reporting Entities	17	Ownership and control report (R. 16.03)	52	884	33	29,172

Table 2 (Question 13)

Regulation 16.03 – Ownership and control report (“OCR”)

a	b	c	d	e ¹³	f	g ¹⁴
Type of Respondent	Estimated Number of Respondents	Report or Record	Average Reports Annually by Each Respondent	Total Annual Responses	Estimated Number of Hours Per Response	Annual Burden in Fiscal Year
Reporting Entities	17	Ownership and control report (R. 16.03)	1	17	615.6	10,465.2

¹¹ Column b times column d.

¹² Column e times column f.

¹³ Column b times column d.

¹⁴ Column e times column f.