

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Registration of Foreign Boards of Trade

OMB CONTROL NUMBER 3038-NEW

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.

Section 738 of the Dodd-Frank Act amends Section 4(b) of the Commodity Exchange Act to provide that the Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade (“FBOT”) that provides the members of the FBOT or other participants located in the United States with direct access to the electronic trading and order matching system of the FBOT, including rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs. Accordingly, Part 48 of the Commission’s regulations establishes a registration requirement and related registration procedures and conditions that apply to FBOTs that wish to provide their members or other participants located in the United States with direct access to their electronic trading and order matching systems. These FBOT registration requirements will help ensure that FBOTs meet certain regulatory standards sufficient to protect market integrity and provide consumer protection.

Estimated numbers of respondents and projected total annual responses and average number of hours per response are provided in Attachment A.

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 information received pursuant to Part 48 would be analyzed by Commission staff and would form a basis for recommendations to the Commission concerning approval of registration for FBOTs, compliance with the conditions for registration, or whether the Commission should take any action regarding lack of compliance with the conditions of registration. All 16 information collections are new.

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 information collection is required to be filed 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.

None of the information collections are specifically duplicative. Each different type of information is needed given the purposes for which the data will be used.

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

The Commission has not previously addressed the question whether FBOTs are, in fact, “small entities” for purposes of the Regulatory Flexibility Act since FBOTs are a new category of registrant created by the Dodd-Frank Act. However, as explained in the Federal Register release, the Commission proposed not to define FBOTs as 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.

If the information required under this collection of information were not collected, the Commission could not implement the proposed registration scheme for FBOTs. Specifically, the Commission would not be able to administer a registration scheme without any information upon which the Commission could base a decision to register or deny an applicant. Under the proposed registration scheme, FBOTs would not be able to make their contracts available in the US through direct access (as defined in the amended section 4(b)) unless they generally meet standards comparable to domestic exchanges that are designed to ensure market integrity as well as consumer protection. Also, limitations on the scope of information the Commission could collect from an applicant would significantly decrease the ability of the Commission to work towards the above stated goals.

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 proposed regulations require FBOTs with linked contracts to provide trade execution and audit trail information, large trader information, and aggregate trader position data on a daily basis.

The proposed regulations also provide specific conditions on FBOTs who want to make swap contracts available for trading to U.S. entities via direct access. Such conditions include a requirement to publically report swap transactions on a real-time basis. The FBOT would also have to send swap transaction data to a swap data repository (“SDR”), and agree to comply with any

requirements imposed by the Commission with respect to cross market oversight issues, including surveillance, emergency actions and the monitoring of trading. Finally, the Commission may attach any other requirements upon notice to and opportunity for the FBOT to comment.

Finally, the proposed regulations could potentially require FBOTs who make contracts that are economically equivalent to those of U.S. registered entities to submit additional information to the Commission, if deemed necessary by the Commission.

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

In order for the Commission to adequately assess whether an FBOT is in compliance a condition for registration, an FBOT might be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation.

- 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;

For enforcement purposes, Commission Regulation 1.31 requires that all books and records required to be kept by the Commodity Exchange Act or by the regulations 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 are open to inspection by any representative of the Commission or the U.S. Department of Justice.

These recordkeeping requirements would allow the Commission to have ready access to records that establish whether a FBOT is in compliance with conditions on registration. Further, the data records would ensure that the Commission could audit data records previously sent to the Commission.

- 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 rules do not involve statistical surveys.

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

The proposed rules do 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 proposed reporting rules do not directly involve any specific pledge of confidentiality regarding the collection of data (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 Commission would 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 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 Federal Register Notice soliciting comments on this Collection was published in the *Federal Register* (75 FR 70974 – 11/19/10). No comments received as yet.

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.

As part of the notice of proposed rulemaking, the Commission has requested public comment with regard to all matters associated with this rulemaking. The Commission plans to maintain contact with FBOTs on a continuous and ongoing basis to resolve issues associated with the collection of information and address concerns.

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 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 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.

The burden figures provided below are the estimates of the Commission (See also Attachment A).

In arriving at a wage rate for the hourly costs imposed, the Commission used the Management & Professional Earnings in the Securities Industry Report, published in 2010 by the Securities Industry and Financial Markets Association Report (2010 Report).

Unless stated otherwise, the Commission used a composite (blended) wage by averaging the mean annual salaries of a Compliance Attorney and a Compliance Specialist (Intermediate), as published in the 2010 Report, and dividing that figure by 1,800 annual working hours to arrive at an hourly wage rate of \$37.40. The Commission chose this methodology to account for the variance in skill sets that may be used to accomplish the collections of information under the proposed regulations. It is important to note that the hourly wage referenced above does not take bonuses into account and certain variables such as employee benefits which can increase the costs of labor.

A. FBOT Registration Reporting Requirements

For the 20 FBOTs currently operating pursuant to existing no-action relief, proposed regulation 48.6 provides for a “limited” application process. Such FBOTs would apply for registration by (1) identifying the specific requirements for registration set forth in section 48.7 or information and documentation required by the Appendix to Part 48 that are satisfied by information previously submitted in the request for no-action relief that remain current and true and resubmitting such information and documentation, and (2) submitting any information and documentation required in a complete application for registration that was not previously provided or is no longer current. The Commission estimates that each FBOT would spend approximately 50 hours of professional time to submit the registration application. Accordingly, the Commission estimates that the aggregate annual hourly burden would be 1,000 hours resulting in an aggregate annualized cost of \$37,400.

Proposed regulation 48.7 sets forth the registration requirements for FBOTs that do not have no-action relief from Commission staff. Currently, six FBOT requests for no-action relief are pending with the Commission staff. The Commission estimates that approximately one additional FBOT per year will seek to become registered with the Commission. Therefore, the Commission used a total of seven FBOTs in its calculation for the number of FBOTs that will be subject to the registration requirements under regulation 48.7. The registration requirements are divided into the same seven general categories evaluated during the course of a review of an application for no-action relief: membership criteria, trading system, contracts, settlement and clearing, regulatory authorities, rules and rule enforcement, and information sharing. The Commission estimates that each FBOT would spend approximately 1,000 hours of professional

time to submit the required information. Accordingly, the Commission estimates the aggregate annual hourly burden would be 7,000 hours resulting in an aggregate annualized cost of \$261,800.

Thus, the Commission estimates that the combined total for registration reporting requirements under regulations 48.6 and 48.7 would be an aggregate hourly burden of 8,000 hours resulting in an aggregate annualized cost of \$299,200.

B. Reporting Requirements for Registered FBOTs

The proposed regulations detail the conditions that a registered FBOT must meet to retain its registration, including general conditions, upon occurrence, and quarterly and annual reporting obligations that are necessary to provide ongoing visibility with respect to a registered FBOT's performance. First, pursuant to regulation 48.8(b)(1)(i)(A), the FBOT would be required to maintain and provide to the Commission on at least a quarterly basis, and at any time promptly upon request, certain volume data including, among other things, data that reflects the percentage of trading originating in the U.S. Second, regulation 48.8(b)(1)(ii)(A)-(F) would require the FBOT to promptly provide the Commission with written notice of certain material changes, including any material change in the information provided in the FBOT's registration application. Third, regulation 48.8(b)(1)(iii)(A)-(F) would require the FBOT to provide the Commission with a certification on an annual basis concerning, among other things, the FBOT's "good standing" as a regulated exchange. Fourth, regulation 48.9 would require the FBOT, upon request by the Commission, to file with the Commission a written demonstration of compliance with the registration requirements or conditions for registration. Finally, if the FBOT wishes to list additional futures, options, and swaps contracts for trading by direct access to the FBOT's electronic trading and order matching systems from the United States, regulation 48.10 would require the FBOT to file a written request with the Commission prior to offering the contracts from within the United States.

The Commission estimates that the 27 registered FBOTs would spend approximately 36 hours of professional time to satisfy the ongoing conditions for registration. Accordingly, the Commission estimates that the aggregate annual hourly burden would be 972 hours resulting in an aggregate annualized cost of \$36,352.80.

C. Reporting Requirements for Registered FBOTs with a Linked Contract

The proposed regulations impose additional conditions on FBOTs that desire to make a linked contract available by direct access to members of the FBOT or other participants located in the U.S. These conditions would be required as part of the registration process and include the following: (1) prompt notification of certain material changes to the linked contract pursuant to regulation 48.8(c)(1)(ii)(C)(1)-(4); (2) daily submission of large trader position information pursuant to regulation 48.8(c)(1)(ii)(D); (3) daily submission of aggregate trader position information pursuant to regulation 48.8(c)(1)(ii)(E); (4) submission of a quarterly report pursuant to 48.8(c)(2)(i); (5) daily submission of trade execution and audit trail data pursuant to regulation 48.8(c)(2)(ii); (6) submission, at least one day prior to the effective date, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the FBOT pursuant to

regulation 48.8(C)(2)(iv); and (7) submission of all disciplinary notices involving linked contracts upon closure of the action pursuant to regulation 48.8(c)(2)(v).

The Commission estimates that a registered FBOT with a linked contract would spend approximately 1,812 hours to submit the information described above. Currently, there is one FBOT with a linked contract that is subject to these conditions. Accordingly, the Commission estimates that the aggregate annualized cost for the FBOT with a linked contract would be \$67,768.80.

D. Reporting Requirements for FBOTs that Make Swaps Available by Direct Access

With respect to swaps contracts, if the FBOT makes swaps contracts available by direct access, regulation 48.8(a)(8)(i) would require the FBOT to report to the public, on a real-time basis, data relating to each swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transaction. The FBOT may satisfy the public reporting requirement by posting real-time swap transaction and pricing data on the FBOT's web site. In addition, regulation 48.8(a)(8)(ii) would require the FBOT to ensure that all swap transaction data is timely reported to a swaps data repository.

Because the Commission has not previously regulated the swap market, it has limited swap data relevant to the estimate concerning the proposed regulations described above. Therefore, the Commission requested comment on this estimate in the proposed rulemaking. The Commission estimates that approximately four FBOTs would make swaps available by direct access and each would spend approximately 4,160 hours to comply with the information reporting requirements for all swap transactions executed on the FBOT. This calculation is based on the estimated number of trading days in a year (250) and includes all swap transactions reported on a real-time basis and to the swap data repository for each trading day. For purposes of the determining the annualized cost for each FBOT, the Commission used a composite (blended) wage rate by averaging the mean annual salaries of a Compliance Attorney, Compliance Specialist (Intermediate), and a Computer Operations Manager from the 2010 Report. The salary of a Computer Operations Manager was added to this calculation because the Commission recognizes that a technology professional may be appropriate for the FBOT in order to comply with the proposed regulations. Therefore, the hourly wage used in this calculation is \$45.43. Accordingly, the Commission estimates the aggregate annual hourly burden would be 16,640 hours resulting in an aggregate annualized cost of \$755,955.

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 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.

The Commission believes that the relevant costs are addressed in the answers to question 12 and 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 and analyzing documents under the new information collections are the salaries and benefits of the Commission's legal staff. The Commission estimates that three full-time attorneys and one full-time legal assistant would be needed to review and analyze approximately 27 FBOT registration applications. Thereafter, the Commission estimates that one full-time attorney and one full-time legal assistant would be needed to review new FBOT registration applications and the ongoing reporting obligations of the registered FBOTs. The average salary in 2010 for an attorney at the Commission is \$159,494.00 and \$96,546.00 for a legal assistant. In order to account for overhead and other benefits for each employee, the salaries have been multiplied by 1.3. Therefore, three attorneys and one legal assistant would cost the Commission approximately \$747,535 per year to review the FBOT registration applications. Thereafter, the estimated cost to the Commission to review any additional registration applications and the ongoing compliance obligations of the registered FBOTs would be approximately \$332,851 per year.

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

These are new collections and the question, therefore, does not apply.

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.

No exceptions exist.

ATTACHMENT A

Registration of Foreign Boards of Trade

A. Registration Application

| Regulation OMB Collection #3038-XXXX | Estimated # of Respondents | Reports Annually By Each Respondent | Total Annual Responses | Estimated Average Number of Hours Per Response | Estimated Total Number of Hours of Annual Burden |
|---|-----------------------------------|--|-------------------------------|---|---|
| Regulation 48.6 regarding submission of “limited” application | 20* | 1 | 20 | 50 | 1,000 |
| Regulation 48.7 regarding information and documentation requirements for registration | 7** | 1 | 7 | 1,000 | 7,000 |
| Total recordkeeping requirements (subpart A) | 27 | | 27 | | 8,000 |

*This number reflects the number of FBOTs that received direct access no-action relief letters from Commission staff that are currently active.

**This number reflects the six FBOTs that have requested direct access no-action relief from Commission staff that are currently pending and one additional registration application that staff anticipates the Commission will receive each year.

B. Reporting Requirements for Registered FBOTs

| Regulation OMB Collection #3038-XXXX | Estimated # of Respondents 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 |
|---|--|--|-------------------------------|---|---|
| Regulation 48.8(b)(1)(i)(A) and (B) | 27 | 4 | 108 | 6 | 648 |

| | | | | | |
|---|----|-----|--------|---|-----|
| regarding trading volume information | | | | | |
| Regulation 48.8(b)(1)(ii)(A)-(F) regarding material changes to registration information | 27 | 1 | 27 | 2 | 54 |
| Regulation 48.8(b)(1)(iii) (A)-(F) regarding annual submission of information | 27 | 1 | 27 | 4 | 108 |
| Regulation 48.9 regarding demonstration of compliance with conditions for registration | 27 | .25 | 6.75 | 8 | 54 |
| Regulation 48.10 regarding the listing of additional futures and options contracts | 27 | 1 | 27 | 4 | 108 |
| Total recordkeeping requirements (subpart B) | 27 | | 195.75 | | 972 |

C. Reporting Requirements for Registered FBOTs with a Linked Contract

| Regulation OMB Collection #3038-XXXX | Estimated # of Respondents | Reports Annually By Each Respondent | Total Annual Responses | Estimated Average Number of Hours Per Response | Estimated Total Number of Hours of Annual Burden |
|--|-----------------------------------|--|-------------------------------|---|---|
| Regulation 48.8(c)(1)(ii)(C) (1)-(4) regarding notification of | 1 | 2 | 2 | 3 | 6 |

| | | | | | |
|--|---|-----|-----|---|-------|
| changes for linked contracts | | | | | |
| Regulation 48.8(c)(1)(ii)(D) regarding large trader position information for linked contracts | 1 | 250 | 250 | 2 | 500 |
| Regulation 48.8(c)(1)(ii)(E) regarding aggregate trader position information for linked contracts | 1 | 250 | 250 | 2 | 500 |
| Regulation 48.8(c)(2)(i) regarding quarterly report for FBOTs with a linked contract | 1 | 4 | 4 | 3 | 12 |
| Regulation 48.8(c)(2)(ii) regarding trade execution and audit trail data for linked contracts | 1 | 250 | 250 | 3 | 750 |
| Regulation 48.8(C)(2)(iv) regarding rules, rule amendments, and other notices for linked contracts | 1 | 20 | 20 | 2 | 40 |
| Regulation 48.8(c)(2)(v) regarding disciplinary notices for FBOTs with linked contracts | 1 | 2 | 2 | 2 | 4 |
| Total recordkeeping requirements (subpart C) | 1 | | 778 | | 1,812 |

D. Reporting Requirements for FBOTs that Make Swaps Available by Direct Access

| Regulation OMB Collection #3038-XXXX | Estimated # of Respondents | Reports Annually By Each Respondent | Total Annual Responses | Estimated Average Number of Hours Per Response | Estimated Total Number of Hours of Annual Burden |
|---|-----------------------------------|--|-------------------------------|---|---|
| Regulation 48.8(a)(8)(i) regarding the real-time reporting of swap transactions | 4 | 250 | 1,000 | 8.32 | 8,320 |
| Regulation 48.8(a)(8)(ii) regarding the reporting of swap transactions to a swaps data repository | 4 | 250 | 1,000 | 8.32 | 8,320 |
| Total recordkeeping requirements (subpart D) | 4 | | 2,000 | | 16,640 |
| Total recordkeeping requirements (includes subparts A, B, C & D) | | | 3,000.75 | | 27,424 |