

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLEC-
TIONS
OMB CONTROL NUMBER 3038-0026

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.

In an effort to prevent the bankruptcy of futures commission merchants (“FCMs”) that are not members of any commodity exchange (three of which occurred during the last six months of 1980), the Commission adopted Regulation 1.58 to require that FCMs margin omnibus accounts on a gross, rather than a net, basis. The rule provides that the carrying FCM need not collect margin for positions traded by a person through an omnibus account in excess of the amount that would be required if the same person, instead of trading through an omnibus account, maintained its own account with the carrying FCM. Therefore, if particular positions in an omnibus account are part of a spread or hedge transaction, and thus would have lower margins than outright positions, the carrying FCM need only collect such lower margin levels. To prevent abuse of this exception to the regulation, a carrying FCM must maintain a written representation from the originating FCM or foreign broker that the particular positions held in the omnibus account are part of a hedge or spread transaction.

2. Indicate how, by whom, and for what purpose the information is to 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 is collected by carrying FCMs. The information is open to inspection by the commodity exchanges, National Futures Association and the United States Department of Justice. The information may also be examined during audits of the originating FCM to determine whether such written representations are consistent with the originating FCM’s other records regarding its omnibus accounts and to determine whether the originating FCM has been properly margining such accounts. The information may be used by the carrying FCM to demonstrate that it is collecting the proper amount of margin for positions carried in the omnibus accounts and serves as a reminder to both the FCM or foreign broker originating the omnibus account and the carrying FCM that gross margining is required, except in the limited circumstances permitted by Regulation 1.58. Without this information collection requirement, there would be no readily available indication that FCMs were complying with Regulation 1.58 and the goal of the regulation, protection of the financial stability of non-member FCMs, would be jeopardized.

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 required by Regulation 1.58 could be stored electronically if the FCMs comply with the Commission Regulation 1.31.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 above.

There are no similar data presently available.

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 businesses.

6. Describe the consequence to the Federal Program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

See the responses to 1 and 2 above.

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

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

For enforcement purposes, Commission Regulation 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 2 years of the 5-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 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.

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.

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.

A copy of the Federal Register notice (76 FR XXXXX, May xx, 2011) soliciting comments is attached.

One comment from the public was received, however, that comment was non-responsive and unrelated to the information collection.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

No payments or gifts are provided.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

These data are not confidential.

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 data collection requirements relating to this information contain no sensitive items 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. Rule 1.58 requires 125 respondents to submit 500 responses, each of which takes .08 hours per response, for a total annual burden of 40 hours. As-

suming a professional wage category of \$25 per hour for preparation, the annual cost is estimated to be \$1,000.

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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.

14. Provide estimates of the annualized costs to the Federal Government and the respondents. 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 federal government incurs no cost specifically attributable to this information collection requirement.

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

Annual responses changed due to a decrease of number of participants in the industry.

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.

This question does not apply.

**ATTACHMENT A
 #3038-0026 – GROSS MARGINING OF OMNIBUS ACCOUNTS
 ACTION: EXTENSION**

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
17 C.F.R. §1.58 GROSS MARGINING OF OMNIBUS ACCOUNTS	125	4	500	.08	40