

**SUPPORTING STATEMENT FOR NEW AND  
REVISED INFORMATION COLLECTIONS**

OMB CONTROL NUMBER 3038-\_\_\_\_\_

**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 3(b) provides that one of the purposes of the Act is to ensure the financial integrity of all transactions subject to the Act and to avoid systemic risk. Section 8a(5) authorizes the Commission to promulgate such regulations that it believes are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. Risk management systems are critical to the avoidance of systemic risks. Section 4s(j)(2) requires each SD and MSP to have risk management systems adequate for managing its business. Section 4s(j)(4) requires each SD and MSP to have internal systems and procedures to perform any of the functions set forth in Section 4s. Section 4d requires FCMs to register with the Commission. It further requires FCMs to segregate customer funds. Section 4f requires FCMs to maintain certain levels of capital. Section 4g establishes reporting and recordkeeping requirements for FCMs. These provisions of law and Commission regulations promulgated pursuant to these provisions create a web of obligations designed to secure the financial integrity of the markets and the clearing system, to avoid systemic risk, and to protect customer funds. Effective risk management by FCMs is essential to achieving these goals.

Accordingly, proposed § 1.73 would apply to clearing members that are FCMs; proposed § 23.609 would apply to clearing members that are SDs or MSPs. These provisions would require these clearing members to have procedures to limit the financial risks they incur as a result of clearing trades and liquid resources to meet the obligations that arise. The proposal would require clearing members to: (1) establish credit and market risk-based limits based on position size, order size, margin requirements, or similar factors; (2) use automated means to screen orders for compliance with the risk-based limits; (3) monitor for adherence to the risk-based limits intra-day and overnight; (4) conduct stress tests of all positions in the proprietary account and all positions in any customer account that could pose material risk to the futures commission merchant at least once per week; (5) evaluate its ability to meet initial margin requirements at least once per week; (6) evaluate its ability to meet variation margin requirements in cash at least once per week; (7) evaluate its ability to liquidate the positions it clears in an orderly manner, and estimate the cost of the liquidation at least once per month; and (8) test all lines of credit at least once per quarter. Each of these items has been observed by Commission staff as an element of an existing sound risk management program at a DCO or an FCM. The proposal also would require clearing members to evaluate their ability to meet calls for initial and variation margin. This includes testing for liquidity of financial resources available to cover exposures due to market events. Each clearing member also would be required to evaluate periodically its ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation. Routine testing of this sort

diminishes the chance of a default based on liquidity problems. Finally, the proposal would require each clearing member to establish written procedures to comply with this regulation and to keep records documenting its compliance. The Commission believes that these are important elements of a good risk management program.

As discussed further below, the additional information collection burden arising from the proposed regulations primarily is restricted to the costs associated with the affected registrants' obligation to establish and enforce procedures to establish risk-based limits, conduct stress testing, evaluate the ability to meet initial and variation margin, test lines of credit, and evaluate the ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation.

The information collection obligations imposed by the proposed regulations are necessary to implement certain provisions of the CEA, including ensuring that registrants perform effective risk management and for the efficient operation of trading venues among swap dealers, major swap participants, and futures commission merchants.

**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 proposed regulations would be an important part of the Commission's regulatory program for swap dealers, major swap participants, and futures commission merchants. The information required to be preserved would be used by representatives of the Commission to ensure compliance with the CEA and applicable Commission regulations.

**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 proposed regulations require that recordkeeping generally be performed in accordance with Commission regulation 1.31, which permits the use of electronic storage media.

**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.**

Swap dealers and major swap participants are new categories of registrants under the Dodd-Frank Act. Accordingly, the required information is not already collected by the Commission for any other purpose. Additionally, the required information is not already collected by the Commission for any other purpose with respect to futures commission merchants. The required information also is not collected by any other agency or available for public disclosure through any other source.

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

The collection of the required information does not involve any small businesses 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.**

Failure to maintain the records required by the proposed regulations would adversely affect the Commission's ability to ensure that swap dealers, major swap participants, and futures commission merchants comply with their recordkeeping obligations under the CEA and Commission regulations and to ensure compliance with the mandatory clearing requirements of the CEA and Commission regulations. Failure to comply with the recordkeeping requirements established by the proposed regulation would prohibit the Commission from ensuring that registrants perform effective risk management and for the efficient operation of trading venues among swap dealers, major swap participants, and futures commission merchants.

**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;**

This question does not apply. The sole reporting requirement contained in the proposed regulations is event-based.

- **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;**

This question does not apply. The proposed regulations do not impose a reporting requirement that would obligate a respondent 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;**

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the [CEA] or by [Commission] 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 five-year period. All such

books and records shall be open to inspection by any representative of the commission or the United States 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;**

This question does not apply. The proposed regulation does not require nor involve any statistical surveys.

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

This question does not apply. The proposed regulation does not require nor involve the use of any statistical data classification.

- **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**

This question does not apply. The proposed regulation does not require a pledge of confidentiality.

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This question does not apply. In any event, the Commission has promulgated regulations to protect the confidentiality of any information collected from respondents. Such regulations are set forth in 17 CFR Part 145.

- 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.**

The Commission is affirmatively seeking comment from the public and from other federal agencies on the information collection requirements of the proposed regulations. The Commission has sought comment on the proposed rules generally as well as on the particular variables used to calculate the hourly burdens associated with the information collection. The Commission specifically has sought comment on: (1) the extent to which each DCO already (i) requires clearing member FCMs, SDs, and MSPs to have each component of risk management, and (ii) audits compliance with such requirement; (2) the extent to which each component of risk management has otherwise been incorporated into existing risk management systems of clearing member FCMs, SDs, and MSPs; and (3) the potential costs and benefits of each component of risk man-

agement. A copy of the proposed regulation as it will appear in the *Federal Register*, including the explicit solicitation of comment, is attached hereto.

**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).**

See response to question 8. The Commission is affirmatively seeking comment from the public and from other federal agencies on the information collection requirements of the proposed regulation. The Commission has sought comment on the proposed regulation generally as well as on the specific variables used to calculate the hourly burdens associated with the information collection. A copy of the proposed regulation as it will appear in the *Federal Register*, including the explicit solicitation of comment, is attached hereto.

**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. No decision to provide any payment or gift to respondents has been made.

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

If the proposed regulations are adopted, the Commission will protect proprietary information according to the Freedom of Information Act and the regulations that the Commission has promulgated to protect the confidentiality of collected information contained in 17 CFR 145, "Commission Records and Information." In addition, section 8(a) of the CEA provides for the confidentiality of data and information, except under the limited circumstances delineated therein. The Commission also is required to protect certain information pursuant to the Privacy Act of 1974.

**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. The proposed regulations do not request nor require the provision of sensitive information, as that term is used in question 11.

**12. Provide estimates of the hour burden of the collection of information. The Statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A. The information collection burden associated with these proposed regulations is estimated to be 524 hours, at an annual cost of \$52,400 for each futures commission merchant, swap dealer, and major swap participant. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The Commission has characterized the annual costs as initial costs because the Commission anticipates that the cost burdens will be reduced dramatically over time as the documentation and procedures required by the proposed regulations become increasingly standardized within the industry.

This hourly burden primarily results from the position risk management obligations that would be imposed by proposed regulations 1.73 and 23.609. Proposed 1.73 and 23.609 would require each futures commission merchant, swap dealer, and major swap participant to establish and enforce procedures to establish risk-based limits, conduct stress testing, evaluate the ability to meet initial and variation margin, test lines of credit, and evaluate the ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation. The Commission believes that each of these items is currently an element of existing risk management programs at a DCO or an FCM. Accordingly, any additional expenditure related to §§ 1.73 and 23.609 likely would be limited to the time initially required to review and, as needed, amend, existing risk management procedures to ensure that they encompass all of the required elements and to develop a system for performing these functions as often as required.

In addition, proposed §§ 1.73 and 23.609 would require each futures commission merchant, swap dealer, and major swap participant to establish written procedures to comply, and maintain records documenting compliance. Maintenance of compliance procedures and records of compliance is prudent business practice and the Commission anticipates that swap dealers and major swap participants already maintain some form of this documentation.

With respect to the required position risk management, the Commission estimates that futures commission merchants, swap dealers, and major swap participants will spend an average of 2 hours per trading day, or 504 hours per year, performing the required tests. The Commission notes that the specific information required for these tests is of the type that would be performed in a prudent market participant's ordinary course of business.

In addition to the above, the Commission anticipates that futures commission merchants, swap dealers, and major swap participants will spend an average of 16 hours per year drafting and, as needed, updating the written policies and procedures to ensure compliance required by proposed §§ 1.73 and 23.609, and 4 hours per year maintaining records of the compliance.

The hour burden calculations below are based upon a number of variables such as the number of futures commission merchants, swap dealers, and major swap participants in the marketplace and the average hourly wage of the employees of these registrants that would be responsible for satisfying the obligations established by the proposed regulation.

There are currently 134 futures commission merchants based on industry data. Swap dealers and major swap participants are new categories of registrants. Accordingly, it is not currently known how many swap dealers and major swap participants will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective after July 16, 2011, the date on which the Dodd-Frank Act becomes effective. While the Commission believes there will be approximately 200 swap dealers and 50 major swap participants, it has taken a conservative approach, for PRA purposes, in estimating that there will be a combined number of 300 swap dealers and major swap participants who will be required to comply with the recordkeeping requirements of the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is \$74.41. Because swap dealers, major swap participants, and futures commission merchants include large financial institutions whose operations management employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these proposed regulations based upon an average salary of \$100 per hour.

Accordingly, the estimated hour burden was calculated as follows:

Developing and Conducting Position Risk Management Procedures for Swap Dealers and Major Swap Participants. This hourly burden arises from the proposed requirement that swap dealers

and major swap participants establish and perform testing of clearing member risk management procedures.

Number of registrants: 300

Frequency of collection: daily

Estimated number of responses per registrant: 252 [252 trading days]

Estimated aggregate number of responses: 75,600 [300 registrants x 252 trading days]

Estimated annual burden per registrant: 504 hours [252 trading days x 2 hours per record]

Estimated aggregate annual hour burden: 151,200 hours [300 registrants x 252 trading days x 2 hours per record]

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for Swap Dealers and Major Swap Participants. This hourly burden arises from the proposed requirement that swap dealers and major swap participants make and maintain records documenting compliance related to clearing member risk management.

Number of registrants: 300

Frequency of collection: as needed

Estimated number of annual responses per registrant: 1

Estimated aggregate number of annual responses: 300

Estimated annual hour burden per registrant: 20 hours

Estimated aggregate annual hour burden: 6,000 burden hours [300 registrants x 20 hours per registrant]

Developing and Conducting Position Risk Management Procedures for Futures Commission Merchants. This hourly burden arises from the proposed requirement that futures commission merchants establish and perform testing of clearing member risk management procedures.

Number of registrants: 134

Frequency of collection: daily

Estimated number of responses per registrant: 252 [252 trading days]

Estimated aggregate number of responses: 33,768 [134 registrants x 252 trading days]

Estimated annual burden per registrant: 504 hours [252 trading days x 2 hours per record]

Estimated aggregate annual hour burden: 67,536 hours [134 registrants x 252 trading days x 2 hours per record]

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for Futures Commission Merchants. This hourly burden arises from the proposed requirement that futures commission merchants make and maintain records documenting compliance related to clearing member risk management.

Number of registrants: 134

Frequency of collection: as needed

Estimated number of annual responses per registrant: 1

Estimated aggregate number of annual responses: 134

Estimated annual hour burden per registrant: 20 hours



Estimated aggregate annual hour burden: 2,680 burden hours [134 registrants x 20 hours per registrant]

**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.**

In addition to the per hour burden discussed above, the Commission anticipates that swap dealers, major swap participants, and futures commission merchants may incur certain start-up costs in connection with the proposed recordkeeping obligations. Such costs would include the expenditures related to re-programming or updating existing recordkeeping technology and systems to enable the swap dealer, major swap participant, or futures commission merchant to collect, capture, process, maintain, and re-produce any newly required records. The Commission believes that swap dealers, major swap participants, and futures commission merchants generally could adapt their current infrastructure to accommodate the new or amended technology and thus no significant infrastructure expenditures would be needed. The Commission estimates the programming burden hours associated with technology improvements to be 60 hours.

According to recent Bureau of Labor Statistics, the mean hourly wages of computer programmers under occupation code 15-1021 and computer software engineers under program codes 15-1031 and 1032 are between \$34.10 and \$44.94. Because swap dealers, major swap

participants, and futures commission merchants generally will be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of \$60 per hour. Accordingly, the start-up burden associated with the required technological improvements would be \$3,600 [\$60 x 60 hours] per affected registrant or \$1,562,400 [\$3,600 x 434 registrants] in the aggregate.

- 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.**

It is not anticipated that the proposed regulations would impose any additional costs to the Federal Government.

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

The program changes or adjustments are necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act, which established a new regulatory scheme.

- 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**

**Part 23 – Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants**

**OMB Collection File 3038-**

Number of Registrants: 434

Frequency of Recordkeeping/Reporting: *See table below (daily, annually, or as needed)*

Start-up Cost Per Registrant: \$3,600

Aggregate Start-Up Cost: \$1,562,400

Estimated Average Burden Hours Per Registrant: 524

Estimated Aggregate Burden Hours: 227,416

Estimated Annual Cost Per Registrant: \$52,400

Estimated Aggregate Annual Cost: \$22,741,600

% of Responses Collected Electronically: 100%

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Annual Hour Burden Per Registrant	Estimated Aggregate Hour Burden	Estimated Annual Cost Per Registrant	Estimated Aggregate Annual Cost
<b>Recordkeeping: Developing and conducting position risk management procedures</b>	434	Daily	252	109,368	2	504 hours	218,736 hours	50,400	21,873,600
<b>Recordkeeping: Developing written procedures for compliance and maintaining records of compliance</b>	434	Initial drafting, updating as needed	1	434	20	20 hours	8,680 hours	2,000	868,000