

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0021

### 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.

This collection of information involves recordkeeping and notice requirements in the Commodity Futures Trading Commission's ("CFTC's") bankruptcy rules for commodity broker liquidations, 17 CFR Part 190 ("Part 190"). These rules apply to liquidations under Chapter 7, Subchapter IV of the Bankruptcy Code, 11 U.S.C. §§ 761 *et seq.* The CFTC promulgated Part 190 pursuant to the authority of 7 U.S.C. § 24. On January 11, 2012 the CFTC voted to amend Part 190, but the amendments did not affect any information collection requirements. A publication date for the amendments has not yet been specified by the Federal Register.

The information collection requirements of Part 190 are intended to facilitate the effective, efficient, and fair conduct of liquidation proceedings for commodity brokers and to protect the interests of customers in these proceedings both directly and by facilitating the participation of the CFTC in such proceedings. Commodity broker liquidations occur at unpredictable and irregular intervals when particular commodity brokers become insolvent; for purposes of estimating information collection burden this supporting statement assumes an average of one commodity broker liquidation every three years based on recent market experience. Information collection requirements in Part 190 can be summarized as follows:

Rule 190.02(a)(1) requires that a commodity that files a petition for bankruptcy, or against which a petition for bankruptcy is filed by another person, must notify the CFTC and the commodity brokers self-regulatory organization of the filing date, court, and docket number.

Rule 190.02(a)(2) requires that in commodity broker liquidations the broker, the applicable self-regulatory organization, or the trustee appointed for purposes of the liquidation, must notify the CFTC no later than the third business day after the order for relief whether the entity intends to transfer or apply to transfer open commodity contracts.

Rule 190.02(b)(1) requires that in commodity broker liquidations the trustee must publish notice to customers in a daily newspaper or newspapers serving each branch office of the broker warning that specifically identifiable customer property held by the broker will be liquidated unless the customer provides appropriate written instructions to the trustee concerning such property.

Rule 190.02(b)(2) requires that in commodity broker liquidations the trustee must use best efforts to request that customers give it instructions regarding the transfer or liquidation of specifically identifiable open commodity contracts and advise customers that, in the absence of instructions, open contracts that are not transferred will be liquidated.

Rule 190.02(b)(3) provides that in an involuntary commodity broker liquidation proceeding the trustee, upon leave of the court, may notify customers of the commencement of the proceeding and request instructions with respect to specifically identifiable customer property.

Rule 190.02(b)(4) provides that in commodity broker liquidations the trustee must promptly notify each customer of record that an order for relief has been entered and must instruct each customer to file a proof of claim containing certain specified information. (The instruction to customers to file a proof of claim is also directly required by statute. 11 U.S.C. § 765(a)(1).)

Rule 190.02(c) provides that when open commodity contracts in commodity broker liquidations are transferred to new brokers, the trustee will transmit to the new brokers any customer instructions concerning the contracts previously received by the trustee.

Rule 190.03(a)(1) provides that in commodity broker liquidations the trustee, on the primary liquidation date, must generate a new statement of account for each class of account of any customer which contains a commodity contract not required to be liquidated.

Rule 190.03(a)(2) provides that the balance of any account generated in accordance with rule 190.03(a)(1) must be adjusted by the trustee for subsequent operations.

Rule 190.04(b) requires that in commodity broker liquidations the trustee must compute the funded balance each business day for each customer account which contains open commodity contracts until the final liquidation date.

Rule 190.06(b) requires that after a commodity broker has filed a petition in bankruptcy, any futures commission merchant that intends to transfer commodity contracts held by or for the commodity broker from or for the account of a customer to another futures commission merchant must notify the CFTC.

Rule 190.06(d) requires that futures commission merchants provide an opportunity for each of their customers to specify, at the time the customer undertakes its first hedging contract, whether, in the event of bankruptcy, the customer prefers that open commodity contracts held in a hedging account be liquidated without seeking customer instructions. The rule further requires that the futures commission merchant must keep records prominently indicating accounts for which the customer has not specified such a preference.

Rule 190.10(c) commodity brokers to provide their customers with a disclosure statement containing information about how customer property is treated under Part 190 in the event of bankruptcy.

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.

Rule 190.02(a)(1): The required disclosure helps alert the CFTC to a commodity broker bankruptcy so that the CFTC can participate in the proceeding and act to ensure that customers and the market are protected and that applicable law is complied with.

Rule 190.02(a)(2): The required disclosure advises the CFTC of planned transfers of customer positions in commodity broker liquidations so that the CFTC can evaluate and determine whether to disapprove the transfer under 11 U.S.C. § 764(b) and 17 CFR § 190.06.

Rule 190.02(b)(1): The required notice helps to alert customers of a commodity broker that is in a liquidation proceeding that their specifically identifiable property will be liquidated unless the customer provides appropriate written instructions to the trustee concerning such property.

Rule 190.02(b)(2): The required notice helps to alert customers of a commodity broker that is in a liquidation proceeding of the need to provide the trustee with instructions regarding the transfer or liquidation of their specifically identifiable open commodity contracts.

Rule 190.02(b)(3): The discretionary notice alerts customers to the commencement of involuntary commodity broker liquidation and of the need to provide the trustee with instructions regarding the handling of customers' specifically identifiable property.

Rule 190.02(b)(4): The required notification alerts customers of a commodity broker in a liquidation proceeding of the need to file a claim to recover part of all of the value of customer property held by the commodity broker.

Rule 190.02(c): This rule ensures that when open commodity contracts in commodity broker liquidations are transferred to new brokers, the new brokers will have available instructions concerning their contracts that customers previously provided to the trustee. The new brokers will then be able to act on the customers' instructions.

Rule 190.03(a)(1): The new account statements required by this rule will be used by the trustee of a commodity broker in a liquidation proceeding to manage accounts pending liquidation, to facilitate transfers of accounts, and to form part of the basis for determining the amount to be paid on customer claims.

Rule 190.03(a)(2): The adjustments required by this rule ensure that the information used by the trustee pursuant to rule 190.03(a)(1) is up to date.

Rule 190.04(b): The calculation required by this rule will be used by the trustee of a commodity broker in a liquidation proceeding to manage accounts pending liquidation, to facilitate transfers of accounts, and to form part of the basis for determining the amount to be paid on customer claims.

Rule 190.06(b): The required disclosure advises the CFTC of planned transfers of customer positions in commodity broker liquidations so that the CFTC can evaluate and determine whether to disapprove the transfer under 11 U.S.C. § 764(b) and 17 CFR § 190.06.

Rule 190.06(d): The required notice and recordkeeping enables customers of futures commissions that undertake hedging contracts to specify in advance whether the customer prefers that open hedging contracts held in a hedging contract be liquidated in the event the

futures commission merchant files, at some later point in time, for bankruptcy in commodity broker liquidation proceeding.

Rule 190.10(c): The disclosure required by this rule provides customers of commodity brokers who post property to serve as margin for commodity trading accounts with information about the legal rules governing how their property will be treated in the event that the broker becomes involved in a commodity broker liquidation proceeding.

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.

Rules 190.03(a)(1), 190.03(a)(2), and 190.04(b) involve bookkeeping, accounts, and recordkeeping procedures that can, and ordinarily would, be performed using electronic systems.

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.

Most of the provisions of Part 190 involve notices or recordkeeping requirements in the unique circumstances of a commodity broker bankruptcy and therefore do not duplicate other collections of information.

Rules 190.6(d) and 190.10(c) involved disclosure notices to customers of futures commission merchants (most of whom also have the legal status of commodity brokers for purposes of Part 190) generally and are not confined to brokers in liquidation proceedings. The Commission has previously amended its risk disclosure rules in order to consolidate disclosure statements and eliminate the requirement that customers provide a signed statement acknowledging receipt of the bankruptcy statement, thereby reducing duplicative disclosure requirements and easing administrative burdens on FCMs. (See 58 Fed. Reg. 17495 (April 5,

1993) and 59 Fed. Reg. 34376 (July 5, 1994)). The rules streamlined disclosure burdens by eliminating the requirement that FCMs provide the mandated disclosure statements to categories of customers whose financial sophistication and knowledge would render the information contained in these statements duplicative. (See 63 Fed. Reg. 8566 (February 20, 1998)).

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 entities.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technological or legal obstacles to reducing burden.

Most of the collection of information provisions of Part 190 involve a single notice to customers or regulators upon the occurrence of a commodity broker liquidation or of certain events within the context of a commodity broker liquidations or else involve a single notice to customers of futures commission merchants. As a result, the frequency cannot be reduced without losing the benefit of the notice. The bookkeeping, accounting, and recordkeeping requirements of rules 190.03(a)(1), 190.03(a)(2), and 190.04(b) are required daily. This is necessary for the information to be meaningful in the fast-moving context of commodity markets where accounts are adjusted daily both by law and as a matter of business practice.

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 rule in question does not require the respondent to report any information to the Commission 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;

Respondents are not required to prepare any written responses.

- 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;

Instructions obtained by futures commission merchants from customers concerning the treatment of customer property in the event of commodity broker liquidation must be retained for more than three years to be available in case the firm becomes involved in commodity broker liquidation more than three years after the instructions are obtained from the customer.

- 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 rule does not involve a statistical survey.

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

The rule does not involve 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 rule does not involve 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.

The rule does not involve submission of proprietary trade secrets or other information to the Commission.



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 copy of the Federal Register notice soliciting comments on this information collection (76 FR 81916, December 29, 2011) is attached.

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.

The Commission continues to consult with industry members to assure that the requirements of this information collection are understood and to evaluate at the staff level the usefulness of the data.

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 occur.

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.

This question does not apply.

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.

None of the regulations require the giving of sensitive information, as that term is used in

Question 11.

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

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 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 estimates for rules 190.06(d) and 190.10(c) reflect the fact that these rules apply to substantially all futures commission merchants and require notices expected to be given to each new customer. Because the notices in question are standardized, it is estimated that they will be prepared by clerical personnel at an average compensation rate of \$25 per hour. The burden estimates for the remaining Part 190 information collection rules reflect the fact that the information collection requirements in question legally fall on the trustee appointed in commodity broker liquidations, who will procure legal, accounting, and other staff to assist in carrying out the required duties. It is estimated that this staff will require compensation at an average rate of \$100 per hour. These burden estimates further are based on the estimate that, on

average, one futures commission merchant that meets the legal definition of a “commodity broker” will file for bankruptcy and enter into a commodity broker liquidation proceeding approximately every three years, based on recent experience. However, the actual incidence of commodity broker liquidations and the number of accounts and customers involved in each is likely to vary based on the evolution of the market, economic conditions, changes in regulations, and other factors.

Rule 190.02(a)(1)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 2  
Estimated Hours per Response: .5  
Estimated Total Hours per Year: .33  
Estimated Cost per Year: \$33

Rule 190.02(a)(2)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 1  
Estimated Hours per Response: 2  
Estimated Total Hours per Year: .67  
Estimated Cost per Year: \$67

Rule 190.02(b)(1)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 4  
Estimated Hours per Response: 1  
Estimated Total Hours per Year: 1.32  
Estimated Cost per Year: \$132

Rule 190.02(b)(2)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 10,000  
Estimated Hours per Response: .1  
Estimated Total Hours per Year: 330  
Estimated Cost per Year: \$33,000

Rule 190.02(b)(3)

Estimated Respondents or Recordkeepers per Year: .05 (rarely if ever occurs)  
Estimated Reports Annually per Respondent or Recordkeeper: 10,000  
Estimated Hours per Response: .2  
Estimated Total Hours per Year: 100  
Estimated Cost per Year: \$10,000

Rule 190.02(b)(4)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 10,000  
Estimated Hours per Response: .2  
Estimated Total Hours per Year: 660  
Estimated Cost per Year: \$66,000

Rule 190.02(c)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 10  
Estimated Hours per Response: 10  
Estimated Total Hours per Year: 33  
Estimated Cost per Year: \$3,300

Rule 190.03(a)(1)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 20,000  
Estimated Hours per Response: .01  
Estimated Total Hours per Year: 66  
Estimated Cost per Year: \$6,600

Rule 190.03(a)(2)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 20,000  
Estimated Hours per Response: .02  
Estimated Total Hours per Year: 132  
Estimated Cost per Year: \$13,200

Rule 190.04(b)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 40,000  
Estimated Hours per Response: .01  
Estimated Total Hours per Year: 132  
Estimated Cost per Year: \$13,200

Rule 190.06(b)

Estimated Respondents or Recordkeepers per Year: .33  
Estimated Reports Annually per Respondent or Recordkeeper: 1  
Estimated Hours per Response: 1  
Estimated Total Hours per Year: .33  
Estimated Cost per Year: \$33

Rule 190.06(d)

Estimated Respondents or Recordkeepers per Year: 125  
Estimated Reports Annually per Respondent or Recordkeeper: 1000  
Estimated Hours per Response: .05  
Estimated Total Hours per Year: 6250  
Estimated Cost per Year: \$1,563

Rule 190.10(c)

Estimated Respondents or Recordkeepers per Year: 125  
Estimated Reports Annually per Respondent or Recordkeeper: 1000  
Estimated Hours per Response: .05  
Estimated Total Hours per Year: 6250  
Estimated Cost per Year: \$1,563

There are estimated to be no capital costs or operating and maintenance costs associated with this collection.

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 startup 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.

This question does not apply.

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.

With respect to the Commission, the costs associated with the disclosure and recordkeeping requirements described herein are inseparable from the costs of running the bankruptcy program as a whole. There are no expenses that are exclusively attributable to the paperwork burden.

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

The agency reevaluated the application of the Paperwork Reduction Act to provisions of Part 190 that impose disclosure or recordkeeping requirements on the trustee in a commodity broker liquidation proceeding in bankruptcy court. The provisions themselves have not been changed. As discussed above, commodity broker bankruptcies are relatively rare and these rule provisions are estimated to apply, on average, to one individual approximately every three years. As also discussed above, the provisions impose a variety of information collection burdens in the relevant circumstances.

16. For collections 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.