

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION
COLLECTIONS

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.

In June of 2008, the US Congress passed the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651,2189-2204 (2008), also known as the Farm Bill. The Farm Bill provided the CFTC with new authority with regard to the regulation of off-exchange retail forex transactions. Among other, things, it directed the Commission to draft rules requiring the registration of counterparties offering off-exchange forex transactions to retail customers as either futures commission merchants (FCMs) or retail foreign exchange dealers (RFEDs). Additionally, the Farm Bill provided for the registration of currently unregistered intermediaries. The Commission has determined to register these individuals in existing registration categories, including as commodity pool advisors (CPOs), commodity trading advisors (CTAs).

In order to effectuate the provisions of the Farm Bill, the Commission has proposed both amendments existing rules and a new section of its regulations - proposed Part 5 of Title 17 of the Code of Federal Regulations - which contains the bulk of the regulations that will apply to counterparties and intermediaries engaging in retail forex transactions. To the extent changes to existing rules affect existing collections, the Commission is submitting supporting statements under the existing collection numbers. This supporting statement concerns new collections of information required by the proposed Part 5.

The following proposed Part 5 regulations would require collections of information:

- Regulation 5.5, which requires RFEDs and forex FCMs and IBs to develop and distribute risk disclosure documents to all customers.

- Regulations 5.6(a), (b), (c), (d), (e), and (f), which require reporting by RFEDs who fail to meet minimum financial requirements or are otherwise required to provide early warning notices.
- Regulation 5.10, which requires RFEDs to maintain records regarding material affiliates.
- Regulations 5.11(a)(1) and (a)(2), which require initial filings of risk management policies and annual risk assessments by RFEDs.
- Regulation 5.12, which requires the filing of initial financial statements by persons applying to be RFEDs and the filing of monthly statements thereafter.
- Regulation 5.13, which requires RFEDs and forex FCMs to provide customers with monthly and trade confirmation statements
- Regulations 5.18 and 5.18, which-require, among other things, that forex counterparties and intermediaries provide the Commission with copies of customer complaints and notice of certain legal proceedings in which they are involved.
- Regulation 5.23, which requires forex FCMs and RFEDs to provide the Commission with notice of bulk transfers and bulk liquidations.

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 Part 5 requirements fall into the following general categories: disclosure, reporting, and record-keeping requirements. In most cases, the rules parallel those currently found in the Commission's regulations that apply to intermediaries involved in on-exchange transactions. As is the case in that context, financial reporting is necessary to ensure that filers are meeting their obligations as registrants. Disclosure and recordkeeping requirements were established to inform and assist customers and to facilitate Commission and NFA in monitoring compliance with the Commissions regulations, respectively/

There are additional Part 5 rules that have no direct analogue in the on-exchange setting. These include the requirements that all forex counterparties and intermediaries (1) maintain records and provide the Commission with copies of communications (i.e. customer complaints) that may indicate a violation of the Commodity Exchange Act or Commission regulations and (2) provide the Commission with copies of all dispositive decisions to which the registrant is a party with respect to retail forex transactions. As noted in the proposing release, the Commission has expended extensive resources and time over the last decade pursuing enforcement actions involving fraud in the offer and sale of retail forex products. These proposed rules would provide a customer;\ protection purpose and assist the Commission in monitoring the activities of its registrants.

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.

Electronic filing or submission is acceptable for the information collections required by Part 5.

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.

These are new regulations, and the requirements are not duplicated elsewhere in the regulations, so duplication in-house is therefore avoided.

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

The Commission has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA. The Commission determined that registered FCMs and CPOs are not small entities for the purpose of the RFA. RFEDs are a new category of registrant; in the Federal Register release proposing the new Part 5 rules, the Commission proposes not to define RFEDs as small entities. With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule whether all or some affected CTAs would be considered to be small entities and, if so; the economic impact on them of any rule. The proposed Part 5 regulations are largely parallel to current requirements applicable to IBs and CTAs within Parts 1 and 4. Here, as with regard to Parts 1 and 4, the Commission does not believe there will be significant economic impact.

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.

With regard to reporting requirements, without frequent reporting, the Commission would be unable to adequately monitor-compliance with financial standards or to provide timely customer protection that assures users of the financial integrity of the registrants with which they deal in their forex trading activities. With regard to collections of information based on the occurrence of certain events (i.e., early warning notices, and submission to the Commission of customer complaints and documentation of dispositive legal actions), the required submissions are no more frequent than is necessary to provide the Commission with timely information regarding the financial status and conduct of its registrants. Finally, disclosure requirements are triggered by the opening of customer accounts, and are no more frequent than is necessary to provide customers with important information regarding the nature of retail forex transactions.

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:

See response to Question 6, above.

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:

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:

Respondents must maintain certain records in order to demonstrate compliance with the Part 5 regulations. For enforcement purposes, Commission Rule 1.31 requires that:

"All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice."

in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study:

The rules do not involve statistical surveys.

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

The 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 rules do not involve pledges 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 rules do not involve submission of proprietary trade secrets or other such 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 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 final rule was submitted to the Federal Register for publication and public comment – 75 FR 55410, September 10, 2010. No relevant comments were received.

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.

This question does not apply at this time. The proposed rules will be published in the Federal Register and the Commission will seek comment on this and other collections associated with the new rules.

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 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 statute¹, regulation, or agency policy.

The Commission has provided no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 C.F.R. Part 145. Outside of the Freedom of Information Act, there is no basis for confidential treatment of any of the information governed by these rules.

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 question 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 regulations covered by this collection do not 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 difference 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 83-1.

Provide estimates of annualized cost to respondents for the hour 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. Depending on the technical expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$25 per hour.

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 cost 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 but information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (few 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.

See 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 this collection are the salaries and benefits of existing staff, including auditors and attorneys. The proposed Part 5 should not add to existing costs.

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

This is a new collection .and the question, therefore, does not apply.

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 83-1.

No exceptions exist.

Attachment A

Collection 0038-XXXX - Off-Exchange Foreign Currency Transactions.

| REGULATION OMB COLLECTION #3038-XXXX 5.5 Risk Disclosure Statement by Registrants | #ESTIMATED#OF RESPONDENTS OR RECORDKEEPERS PER YEAR | REPORTS ANNUALLYBY EACH RESPONDENT | TOTALANNUAL RESPONSES | ESTIMATED AVERAGE NUMBEROF HOURS PER RESPONSE | ESTIMATED TOTAL NUMBEROF HOURSOF ANNUAL BURDEN |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------|--------------------------|-----------------------------------------------------------|---------------------------------------------------------------|
| RFEDs | 9 2 | 1 | 2 | 1.85 | 3.7 |
| FCMs | 15 | 1 | 15 | 1.85 | 27.75 |
| IBs | 58 | 1 | 58 | 1.85 | 107.3 |
| REPORTING | | | | | |
| 5.12 | | | | | |
| RFEDs | 15 | 12 | 180 | 2.75 | 495 |
| 5.12 APPLICANTS FOR REGISTRATION AS RFEDs | 0- | 1 | 0 | 1 | 0 |
| 5.6(a) (b)(c)(d)(e)(f) - REPORTING BY RFEDs WHO FAIL TO MEET MINIMUM FINANCIAL REQUIREMENTS OR ARE OTHERWISE REQUIRED TO PROVIDE EARLY WARNING NOTICES RFED | 15 | | 15 | | 15 |
| 5.11(a)(1) - INITIAL FILING OF ORG CHART. RISK MANAGEMENT POLICIES & NON-CUSTOMER ACCT INFORMATION | | | | | |
| 5 | | | | | |
| . | | | | | |
| 1 | | | | | |
| 1 | | | | | |
| (| | | | | |
| a | | | | | |
|) | | | | | |
| (| | | | | |
| 2 | | | | | |
|) | | | | | |
| - | | | | | |
| A | | | | | |
| N | | | | | |
| N | | | | | |
| U | | | | | |
| A | | | | | |
| L | | | | | |
| R | | | | | |
| I | | | | | |
| S | | | | | |
| K | | | | | |
| A | | | | | |
| S | | | | | |
| S | | | | | |
| E | | | | | |
| S | | | | | |
| S | | | | | |
| M | | | | | |
| E | | | | | |
| N | | | | | |
| T | | | | | |
| F | | | | | |
| I | | | | | |
| L | | | | | |
| I | | | | | |
| N | | | | | |
| G | | | | | |

15

30

5.13 - REPORTING TO CUSTOMERS OF
RFEDS, FCMS; MONTHLY CONFIRMATION
STATEMENTS

••

| | | | | | |
|-------|----|----|-----|---|------|
| RFEDS | 15 | 12 | 180 | 6 | 1080 |
| FCMS | 2' | 12 | 24 | 6 | 144 |

5.18 (g) - INTERMEDIARY TO MAINTAIN
RECORDS RE: ALL COMMUNICATIONS
CONCERNING POSSIBLE VIOLATIONS OF ACT

| | | | | | |
|--|-----|--|-----|------|-------|
| | 922 | | 922 | 0.75 | 691.5 |
|--|-----|--|-----|------|-------|

5.18(k) - ANNUAL CERTIFICATION OF CHIEF
COMPLIANCE OFFICER

| | | | | | |
|-------|----|---|----|------|-------|
| RFEDS | 15 | 2 | 15 | 0.75 | 11.25 |
| FCM | | | 2 | 0.75 | 1.5 |

5.19 - PENDING LEGAL PROCEEDINGS

| | | | | | |
|--|----|--|----|--|----|
| | 50 | | 50 | | 50 |
|--|----|--|----|--|----|

SUBTOTAL REPORTING REQUIREMENTS

| | | | | | |
|--|-------|--|-------|--|-------|
| | 1,126 | | 1,478 | | 2,657 |
|--|-------|--|-------|--|-------|

RECORDKEEPING

5.10 - RFED TO MAINTAIN RECORDS RE:
MATERIAL AFFILIATES

| | | | | | |
|--|----|--|----|--|----|
| | 15 | | 15 | | 45 |
|--|----|--|----|--|----|

| | | | | | |
|-----------------------------------------|-------|-----|-------|-----|-------|
| 5.8 -AGGREGATE RETAIL FOREX ACCOUNTS | 15 | 200 | 3000 | 0.5 | 1500 |
| 5.23 - NOTICE OF ACCOUNT TRANSFERS | | | | | |
| SUBTOTAL RECORDKEEPING REQUIREMENTS | 30 | | 3,015 | | 1,545 |
| TOTAL REPORTING AND RECORDKEEPING | 1,156 | | 4,493 | | 4,202 |