

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0052

### 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.

The Commission is seeking to amend control number 3038-0052. The regulations governing designated contract markets (DCMs) were adopted pursuant to the requirements of the Commodity Futures Modernization Act of 2000 (CFMA).<sup>1</sup> Part 38 of the Commission's regulations governs the activities of DCMs. The information collected pursuant to Part 38 is necessary for the Commission to evaluate whether entities operating as, or applying to become DCMs, comply with Part 38 requirements. Collection 3038-0052 was created in response to the Part 38 regulatory requirements for designated contract markets.

On July 21, 2010, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, ("Dodd Frank Act").<sup>2</sup> Title VII of the Dodd-Frank Act amends the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 723 of the Dodd-Frank Act requires, among other things, that swaps subject to clearing shall be executed on either a board of trade designated as a contract market ("DCM") or a swap execution facility (SEF). This collection retains the hourly burden of the original and subsequently amended 3038-0052 collection and includes additional hourly collection time for the inclusion of swaps that will be allowed to be transacted on a designated contract market and for compliance with additional core principles. The additional burden is as follows:

- Generally, Part 38 is being amended by Section 735 of the Dodd-Frank Act to allow for the transaction of swaps on the designated contract market. Additionally, the Dodd-Frank Act incorporated former designation criteria for DCMs into an expanded list of core principles for DCMs to comply with. DCMs are now subject to 23 core principles including enforcing rules; listing contracts for trading that are not readily susceptible to manipulation; monitoring trading to prevent market disruption; adopting position limits or position accountability levels; adopting rules to provide for the exercise of emergency authority, in consultation with the Commission; making information concerning contract terms and conditions and the trading mechanism readily available

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<sup>1</sup> 7 U.S.C. 1 *et seq.*

<sup>2</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

to market authorities, market participants and the public, making public daily information regarding prices, volume, open interest and opening and closing price ranges; protecting the price discovery process in the centralized market; recording and safely storing identifying trading information; providing for the financial integrity of contracts traded and the protection of customer funds; protecting market participants from abusive practices; providing rules and facilities for alternative dispute resolution; providing fitness standards for board and committee members and others with access to the facility; providing rules to minimize conflicts of interest in the decision making process; ensuring that the composition of the governing board of a mutually owned contract market reflects market participants; maintaining records of all activities of the business of the contract market in a form and manner acceptable to the Commission for five years; avoiding rules that result in unreasonable restraints of trade or anticompetitive burden on trading; maintaining adequate financial resources; providing for diversity of Board members and providing swaps information to the Securities and Exchange Commission.

- Specifically, New Core Principle 21 (Financial Resources) requires DCMs to have adequate financial, operational and managerial resources. In order to demonstrate compliance with Core Principle 21, each respondent will need to file reports to the Commission on a quarterly basis, which would result in 4 quarterly responses per respondent per year.
- Revised Regulation 38.3 requires FORM DCM to be filled out by applicants for designation for the purpose of collecting uniform and complete information from all DCM applicants.

Estimated numbers of respondents, numbers of additional hours of burden and new projected total quarterly responses 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.

This Commission will continue to use all information previously collected under OMB Control Number 3038-0052 in addition to the new information for swaps and for compliance with new core principles to determine whether DCMs, and applicants to become DCMs, are in compliance with the applicable core principles.

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.

All required submissions by DCMs to the CFTC must be sent in electronically (email via internet). All required information to be provided to the public may be posted on the DCMs website.

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.

Additional information collected under this OMB Control Number (including the new information for swaps and new core principles) is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available from 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 required information collected under this OMB Control Number, (including the new information for swaps and new core principles) does not involve any small businesses or other small entities. 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 Regulatory Flexibility Act (RFA). The Commission previously determined that DCMs are not small entities for the purpose of the RFA.

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.

This question is not applicable.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

The proposed rules do not require respondents 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;

In order for the Commission to adequately perform its statutory responsibility to determine whether DCMs, and applicants to become DCMs, are in compliance with the applicable core principles, a request for information may require the collection and

presentation of information in fewer than 30 days depending on the exigency of the situation.

- requiring respondents to submit more than an original and two copies of any document;

Respondents are not required to submit more than an original and two copies of any of documents.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

DCMs are required to maintain records of all activities related to their business as a contract market, in a form and manner acceptable to the Commission, 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, pursuant to Commission Regulation 1.31 and Core Principle 18 (Recordkeeping). All such books and records are 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 collection does not involve a statistical survey.

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

The collection does not involve the use of any 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 collection does not involve any 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 Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These may be found at 17 CFR Part 145.

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.”

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 C.F.R. 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A Federal Register Notice soliciting comments on this collection was published in the *Federal Register* (75 FR 80572, December 22, 2010)

One DCM applicant commented that the new DCM application form, Form DCM, provides a roadmap of required documentation, balances the needs of the Commission with the needs of the marketplace, and should result in a streamlined and standardized review process, with which the Commission agrees.

Other commenters suggested that the 60 days proposed for existing DCMs to certify compliance with the core principles and the rules implementing them, would be unduly burdensome. Accordingly, the Commission extended the deadline to 120 days, in order to provide an appropriate amount of time for a DCM to make any changes to its rules, procedures, and systems, and to seek board and committee approval, that may be needed to support the preparation and filing of a one-time certification, for which the Commission has accounted in the 10% increase it has proposed for its part 38 information collection.

Another commenter stated that an increased documentation burden associated with the submission process would greatly increase the cost and timing for DCMs to list products without providing any true corresponding benefit to the marketplace. This commenter noted that the Commission indicated that the proposed rules for Provisions Common to Registered Entities will increase the overall collection burden on registered entities by approximately 8,300 hours per year.<sup>3</sup> The referenced burden was accounted for in the Commission’s information collection for the part 40 rules that were adopted in July, 2011, however, and therefore the burden associated with that collection is not duplicated here.

Similarly, a DCM commented on the burdens associated with rules implementing core principles 10 and 18, in particular the requirement to separately identify block trading in its daily volume reports. The burden associated with block trading is accounted for in the information collection associated with the Commission’s Real-Time Public Reporting of Swap Transaction Data rulemaking. No adjustment is being made to the amendment to this part 38 collection, to avoid double-counting.

In addition, a DCM commented on the rules implementing the general recordkeeping requirements of core principle 18. Core principle 18 incorporates by reference § 1.31 of the

<sup>3</sup> See 75 FR at 67290.

Commission regulations and the recordkeeping requirements in the Commission's Swap Data, Recordkeeping, and Reporting Requirements proposed rulemaking. The § 1.31 requirements are already covered by the existing information collection for part 38, with the incremental costs associated with the introduction of swap trading, if a DCM elects to do so, covered by the 10% increase contained in the Commission's amended information collection. The recordkeeping requirements in the proposed Swap Data, Recordkeeping, and Reporting Requirements rulemaking are accounted for in the information collection request that was developed for that rulemaking, and no adjustment is being made to the amendment to the part 38 information collection in response to the comment to avoid double-counting.

With respect to the information collection in rules implementing core principle 10 by establishing specific audit trail requirements, two DCMs commented that the requirements would be burdensome, costly, and unnecessary. DCM compliance with core principle 10 should predate the enactment of the Dodd-Frank Act, however, and the information collections associated with core principle 10 are covered by the Commission's existing part 38 information collection. Any burden increase associated with the maintenance of additional records resulting from the introduction of swap trading, if a DCM elects to do so, has been accounted for in the 10% increase in designation and compliance costs discussed above.

One comment was received on the information collection burdens associated rules that were proposed to implement new core principle 20, which requires each DCM to maintain a business continuity-disaster recovery plan and to report system security-related events and all planned changes to automated systems that may impact the reliability, security, or scalability of the systems. In response to the commenter, expressing the concern that the rule would require the reporting of insignificant system events, the Commission is adopting final rules that require reporting only of significant system malfunctions and advance notification of material system changes. The resulting burden reduction obviates the need to consider an increase in the part 38 information collection amendment.

Finally, an existing DCM commented that the hours estimated for designation and compliance and the additional new annual cost of compliance with the proposed rules were extremely low in hours and cost. The commenter explained that due to the vast number of additional requirements the total burden is becoming unwieldy and excessive. This commenter did not provide any estimate of what costs would be more accurate for purposes of the part 38 information collection, and thus the Commission could not evaluate alternative estimates to determine whether they would be more appropriate than what was proposed, which was based on past Commission experience with existing collections of information and which accounts only for those collections of information that are not now or will not be covered by other collections of information. In short, the Commission has evaluated carefully the comments discussed above and determined that the 10% general increase by which the Commission seeks to amend its part 38 collection of information is appropriate. The 10% increase is intended to cover only the burdens associated with collections of information that are not already covered in the existing part 38 information collection, or in other existing collections or collections that are being established with other rulemakings.

The 10% increase tracks the already approved part 38 information collection, which accounted for the many one-time or infrequent information collections contained in part 38 over the assumed life of a DCM. As a general rule, the information collections in this rulemaking that are not already covered have the same characteristics: The required filing one-time certifications and demonstrations of compliance by existing DCMs, the filing of occasional exemptive requests, reporting of material events that are expected to occur infrequently, the expansion of a DCM's existing audit trail program to cover swap transactions, if the DCM determines to list swaps, and the one-time or infrequent system changes needed to report transactions, such as EDRPs, that are not covered in the information collection requests of other rulemakings.

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.

Opportunity for public comment is provided when regulations are initiated or amended. Contact with DCMs is maintained on a continuous and ongoing basis.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances are anticipated.

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

The question is not applicable.

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

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.”

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

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 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.

See below.

- 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.

See below.

- 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.

Commission staff has previously estimated 300 hours average response time from each respondent for this collection for designation and compliance purposes pursuant to Part 38. Based on its experience with administering registered entities' submission requirements since implementation of the CFMA, Commission staff believes that the response time for designation and compliance with core principles would increase by 10% generally with the implementation of swaps trading on DCMs and additional core principle compliance. Commission staff estimates that it would receive filings from 18 respondents.<sup>4</sup> Accordingly, the additional burden

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<sup>4</sup> The number of DCMs increased from 13 to 16 since the last amendment to Collection 3038-0052.



in terms of hours would be 30 additional hours per respondent and 540 additional hours annually for all respondents for designation and compliance with core principles generally.

Additionally, pursuant to the proposed rulemaking, respondents are subject to new Core Principle 21 (Financial Resources) that requires the respondent to have adequate financial, operational and managerial resources. In order to demonstrate compliance with Core Principle 21 specifically, each respondent will need to file reports to the Commission on a quarterly basis, which would result in 4 quarterly responses per respondent per year. Commission staff estimates that each respondent would expend 10 hours to prepare each filing required under the proposed regulations. Commission staff estimates that it would receive quarterly filings from 18 respondents. Accordingly the additional burden in terms of hours would be 40 additional hours annually per respondent and 720 additional hours annually for all respondents to comply with Core Principle 21 specifically.

Commission staff estimates that respondents could expend up to an additional \$3,640 annually based on an hourly wage rate<sup>5</sup> of \$52.00 (30 hours + 40 hours x \$52.) to comply with the proposed regulations. This would result in an aggregated additional cost of \$65,520 per annum (18 respondents x \$3,640).

See updated Attachment A.

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 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.

See below.

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<sup>5</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2010 by the Securities Industry and Financial Markets Associations (2010 Report). The wage rate used is a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, a Programmer (Senior) and a Senior Treasury/Cash Management Manager as published in the 2010 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$52.00.

- 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.

See below.

- 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.

All costs are accounted for in responses to Items 12 and 14. Additionally 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 estimate of the cost to the government per applicant/record-keeper is about \$120,000 annually based on ten full time equivalents reviewing for 25 days at 8 hours per day (2,000 hours) at an average salary of \$60 per hour<sup>6</sup>.

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

The new regulations allow for the transacting of swaps on DCMs, provide for 5 new core principles for DCMs to comply with in addition to various revised core principles that incorporate former designation criteria.

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

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<sup>6</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used a composite (blended) rate of salaries and benefits for economists (Grade 11-13) and attorneys (Grade 11-14) in the Division of Market Oversight using the CFTC 2010 Washington Pay Chart (with adjusted locality pay) and divided that figure by 2000 annual working hours to arrive at the hourly rate of \$60.

schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

No exceptions exist.

Attachment A

Collection 3038-0052

Part 38 Establishing Procedures for  
Designated Contract Markets and Applicants Seeking Designation

Previous Estimated Hourly Burden

Report	Estimated Number of Respondents	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours per year	Annual Reporting Burden
Designation and Compliance	13	NA	NA	300	3900
Annual	13	1	13	70	910
Total	13	1	13	370	4810

Amended Estimated Hourly Burden

Report	Estimated Number of Respondents	Reports Per period by Each	Total Responses	Estimated Average Number of Hours per year	Annual Reporting Burden
Designation and Compliance	18*	NA	NA	330	5940
Annual	18	1	18	70	1260
Quarterly	18	4	72	40	720
Total	18	5	90	440	7920

**\*The proposed rulemaking referenced 17 number of respondents. This revised supporting statement for the final rulemaking was increased to include the Eris Exchange which was designated on October 28, 2011.**