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, to account for rules that are being proposed to enhance self-regulatory organization examination programs and to strengthen the protection of customer funds and the integrity of the futures markets (the "DCM Collection"). The regulations governing designated contract markets (DCMs) were adopted pursuant to the requirements of the Commodity Futures Modernization Act of 2000 (CFMA).[1] 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 DCMs.

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act")[2] into law. 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 DCM and for compliance with additional core principles. Collection 3038-0052 was last amended with these rules implementing the Dodd-Frank Act.

The Commission now is finalizing new rules in an effort to prevent unauthorized usage of customer funds by FCMs (the "final customer protection rules" or "Customer Protection Collection"). This includes proposed modifications to existing rules respecting DCMs. Under the proposed rules, DCMs would be obligated to comply with additional requirements for self-regulatory organizations, including the requirement to adopt enhanced examination procedures and have examination programs reviewed by an

[1] 7 U.S.C. 1 *et seq.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

examinations expert and having the report of such examinations expert filed with the Commission at least once every two years, which would increase recordkeeping and reporting requirements by approximately 50 burden hours to as many as 15 DCMs.

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 Commission will continue to use all information previously collected under OMB Control Number 3038-0052 as previously justified, and will use the new information to be collected under the final customer protection rules to enhance the ability of the Commission and the designated self-regulatory organization to identify problematic financial matters in time to avoid market disruptions when an FCM may fail, particularly with respect to the tie-up of customer funds that may result.

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 Commission under the final customer protection rules may be submitted electronically. Records required to be kept may similarly be maintained electronically.

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 the final customer protection rules 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-I), describe the methods used to minimize burden.

The required information collected under the final customer protection rules will not affect any small business or small entities. The DCMs that would be subject to these rules each are non-small entities for purposes of the Regulatory Flexibility Act. The Commission determined that DCMs, by virtue of the statutory requirements applicable to them, are not small entities in 1982. There have been no statutory changes that would alter that determination.

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 Customer Protection Collection does 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 administer the final customer protection rules consistently with their purpose, a DCM may periodically be required to respond to a request for information from the Commission 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 statue 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 are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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.

The Commission affirmatively sought comment from the public and from other federal agencies on the information collection requirements of the proposed regulations. A copy of the proposed regulations as they appeared in the *Federal Register* was provided previously, and a copy of the final regulations 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.

The Commission developed the rules now being finalized for DCMs internally, applying its knowledge of SRO examination programs. Contact with DCMs respecting their examination programs is maintained on a continuous and ongoing basis. Opportunity for public comment was provided when the proposed regulations were published in *Federal Register release 77FR 67866*. The Commission granted a 30-day extension to the original 60-day comment period, *78 FR 4093*.

With respect to the estimates established for the customer protection rulemaking published in November, 2012 and now being finalized, the Commission developed the estimates contained in the proposed rulemaking by reviewing similar collections that already have been proposed and approved by OMB. Moreover, the proposed rules were published in the Federal Register and the Commission sought public comment on this and other collections associated with the new and amended rules in the proposal.

With respect to the November 2012 customer protection proposal, the Commission received 117 comments, numerous of which discussed the need for, effectiveness and practicality of various proposed rules, however, none of the commenters questioned the burden estimates provided in the proposed rulemaking or the ICR that was submitted. To the extent that there were comments on the need for, effectiveness and practicality of various proposed rules, they related to the rulemaking as a whole rather than the collections in particular, those comments were addressed in the preamble of the final rulemaking.

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." Moreover, the Commission complies with the Freedom of Information Act regulations it has established, set forth at 17 CFR Part 145, and its Government in the Sunshine Act regulations, set forth at 17 CFR Part 147.

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 attachment A.

- 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 attachment A.

- 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 our 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.

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.

The cost of enhancing examination procedures and the cost of periodic audits are expected to vary widely among self-regulatory organizations. While costs may be estimated in burden hours, the dollar cost of these functions will depend on the extent to which the size of the SRO and whether the necessary procedure changes and periodic audits will be made by personnel of each SRO individually, whether the procedures will be developed and the audits will be conducted by third parties under contract, or whether consortia of SROs will develop and adopt one set of common examination procedures, and how many market participants each SRO may examine, which may vary significantly from year-to-year and by the size of the SRO's membership.

- 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 prior response.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of the annualized costs to the Federal Government. 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 requesting and reviewing documents under the existing OMB Collection 3038-0024 and this amendment are the salaries and benefits for attorneys and auditors to analyze the information collected. The proposed amendment will add to existing costs, however, the information collected is of the same type and amount as the existing collection.

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

The proposed regulations are designed to enhance the monitoring and security of customer funds that are held by a member of the DCM.

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.

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 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

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
Sub-Total	18	5	90	440	7920
Examination Program and Audit of Program	15	NA	15	50	750
Sub-Total	15	NA	15	50	750
TOTAL	18	5	105	490	8670