

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

OMB CONTROL NUMBER 3038-XXXX

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.**

Derivatives markets have transitioned from the manual processes to highly automated trading and trade matching systems. Modern DCMs and DCM market participants, in particular, are characterized by a wide array of algorithmic and electronic systems for the generation, transmission, management, and execution of orders, as well as systems used to confirm transactions, communicate market data, and link markets and market participants through high-speed networks. While technologies have evolved, the underlying functions of derivatives markets remain the same, as do the Commission's responsibilities under the Commodity Exchange Act (the "CEA" or "Act"). Through proposed Regulation AT, the Commission is taking its next steps in ensuring that its regulatory standards and industry practices properly address current and foreseeable risks arising from automated trading, and promote responsible innovation and fair competition among markets and market participants.

The proposed regulations are intended to prevent and mitigate risks arising from algorithmic trading activity, increase transparency around DCMs electronic trade matching platforms and the use of self-trade prevention tools on DCMs, and foster transparency with respect to DCM programs and activities, including market maker and trading incentive programs, that have become more prominent as automated trading becomes the dominant market model. The obligations created by the proposed rules are essential to avoid prevent disruptions to market integrity, avoid systemic risk and promote responsible innovation and fair competition among boards of trade, other markets and market participants.

This collection of information is necessary to implement the following provisions of the Act. Section 3(b) provides that it is the purpose of the Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants. Section 8a(5) provides the Commission with authority to promulgate rules as reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. Section 4c(a)(6) of the Act provides rulemaking authority to prohibit disruptive trading practices. Section 1a(23) of the Act provides that the Commission, by rule or regulation, may include within, or exclude from, the term 'floor trader' any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly

engaged who trades solely for such person's own account if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

The proposed regulations requiring a new collection of information are as follows:¹

Proposed § **1.83(a) and (b)** would require AT Persons² and FCMs that are clearing members for one or more AT Persons to prepare and submit an annual report to each DCM on which the AT Person is engaged in Algorithmic Trading. The AT Person's report must describe the pre-trade risk controls required by proposed § 1.80(a)(i), including a description of each enumerated control and a description of all parameters and specific quantitative settings. Together with the annual report, each AT Person would be required to submit copies of the written policies and procedures developed to comply with §§ 1.81(a) and 1.81(c). The clearing member FCM's report must describe the FCM's program for establishing and maintaining the pre-trade risk controls required by proposed § 1.82(a)(i).

Proposed § **1.83(c) and (d)** would require AT Persons and FCMs that are clearing members for one or more AT Persons to keep books and records and provide them upon request to each DCM on which the AT Person engages in Algorithmic Trading. AT Persons must keep and produce books and records regarding such AT Person's compliance with all §§ 1.80 and 1.81 requirements. FCMs must keep and provide books and records regarding compliance with all § 1.82 requirements.

Proposed § **40.23** would require each DCM to implement rules reasonably designed to prevent self-trading by market participants, except as specified in § 40.23(b). Pursuant to § **40.23(c)**, market participants must request approval from the DCM that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control, on the basis that they meet the criteria of § 40.23(b).

Proposed § **40.23(d)** would require that for each product and expiration month traded on a DCM in the previous quarter, the DCM must prominently display on its website the following information: (i) the percentage of trades in such product including all expiration months that represent self-trading approved (pursuant to § 40.23(c)) by the DCM, expressed as a percentage of all trades in such product and expiration month; (ii) the percentage of volume of trading in such product including all expiration months that represents self-trading approved (pursuant to § 40.23(c)) by the DCM, expressed as a percentage of all volume in such product and expiration month; and (iii) the ratio of orders in such product and expiration month whose matching was prevented by the self-trade prevention tools described in paragraph (a) of § 40.23, expressed as a ratio of all trades in such product and expiration month.

¹ Please see separate OMB submission and supporting statements amending existing information collection 3038-0023 with respect to proposed § 1.3(x)(3), information collection 3038-0052 with respect to proposed §§ 38.401(a) and 38.401(c) and 40.26; and information collection 3038-0093 with respect to proposed § 40.25.

² Regulation AT defines "AT Persons" as any person registered or required to be registered as a: (i) FCM, floor broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker that engages in "Algorithmic Trading" (as defined in Regulation AT) on or subject to the rules of a DCM; or (ii) floor trader as defined in proposed § 1.3(x)(3).

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.

§ 1.83(a) and (b). DCMs would use this data as part of a compliance review program required to be established pursuant to proposed § 40.22. The § 1.83 reports will enable each DCM to have a clearer understanding of the pre-trade risk controls of all AT Persons that are engaged in Algorithmic Trading on its market and the pre-trade risk control programs of clearing member FCMs. Furthermore, because AT Persons will have great flexibility in how they implement their pre-trade risk controls pursuant to §§ 1.80(a)(i), the compliance reports will help ensure that controls are reasonably designed and calibrated. Since each AT Person and clearing member FCM will only have information as to its own pre-trade risk controls and overall risk control program, feedback from an objective third party, DCMs, will provide those market participants with a better understanding of whether their pre-trade risk controls (as to AT Persons) and pre-trade risk control programs (as to clearing member FCMs) are consistent with industry practice.

§ 1.83(c) and (d). DCMs would use this data to comply with proposed § 40.22(e). Proposed § 40.22(e) would require DCMs to review and evaluate the books and records that AP Persons and clearing member FCMs keep regarding compliance with §§ 1.80 and 1.81, or § 1.82, respectively. The retention of such books and records will enable DCMs to have a clearer understanding of the procedures implemented by all AT Persons and clearing member FCMs to address the risks of automated trading. Feedback from an objective third party, DCMs, will provide market participants with a better understanding of whether such procedures are consistent with industry practice.

§ 40.23(c). DCMs would use market participants' self-trade approval requests to ensure that self-trading approved by DCMs meets the criteria set forth in § 40.23(b).

§ 40.23(d). This data disclosed by DCMs to the Commission and market participants would be used to understand the levels of DCM-approved and DCM-prevented self-trading that is occurring on each DCM.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The collections of information described above may be reported 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.

Proposed §§ 1.83 and 40.23 are entirely new regulations. Therefore, the required information is not already collected by the Commission for any other purpose, collected by any other agency, or available for public disclosure through any other source.

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

The Commission does not believe that this collection of information will have a significant economic impact on a substantial number of small entities. As stated in the NPRM, the Commission estimates that there will be at most 420 AT Persons.

The small entities to which the information collection may apply are those floor brokers, floor traders (as defined in § 1.3(x)(3) of the proposed rulemaking), commodity trading advisors (CTAs) and introducing brokers (IBs) that engage in Algorithmic Trading, as defined in the proposed rulemaking, and fall within the definition of a “small entity” under the Regulatory Flexibility Act (RFA). The Commission estimates that no floor brokers will be “small entities” for purposes of the RFA, and that a maximum of 100 proprietary firms engaged in Algorithmic Trading will be considered “floor traders” under § 1.3(x)(3) of the proposed rulemaking. The Commission estimates that the information collection will apply to no more than a total of 320 CTAs and IBs, and likely significantly less than 320. Based on the numbers described above, the Commission does not believe that a substantial number of small entities will be impacted by the information collection.

Further, the definition of AT Person is limited to entities that conduct Algorithmic Trading. The Commission believes that entities with such capabilities are generally not small entities. The Commission has minimized any burden to small business or other small entities by proposing regulations that represent an appropriate balancing of its goal of increased transparency and risk reduction against the burden placed on such entities. The NPRM asks specific questions on the issue of how the proposed regulations may affect small entities, in particular, whether sole proprietorships would be considered AT Persons and whether Regulation AT requirements should vary depending on the size, sophistication or other attributes of the AT Person.

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.

The proposed regulations provide for the following frequency of collection: § 1.83(a) and (b) (annual reports); § 1.83(c) and (d) (retention of books and records, intermittent collection); § 40.23(c) (intermittent self-trade approval requests); § 40.23(d) (quarterly updating of self-trade data).

The proposed frequency of collection requirements reflect the Commission's balancing of its goal increased transparency and risk reduction against the burden placed on the affected entities. The Commission believes that the requirements reflect the minimum reporting and disclosure that is necessary to achieve the Commission's objectives of preventing disruptions to market integrity, avoiding systemic risk and promoting responsible innovation and fair competition among boards of trade, other markets and market participants. In order to achieve such objectives in an environment where derivatives markets have transitioned from the manual processes to highly automated trading and trade matching systems, the Commission must have new rules addressing the risks of automated trading.

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 regulations do not requires respondents to report information to the agency 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:**

Not applicable.

- **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 documents to the Commission or third parties.

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

For enforcement purposes, Commission Regulation 1.31 requires that all books and records required to be kept by the 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 2 years of the 5-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;**

Not applicable.

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

Not applicable.

- **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 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 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.**

In the proposing Federal Register release, the Commission seeks public comment on any aspect of the proposed collection of information.

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

Not applicable. The Commission has neither considered nor made any payment or gift to a respondent.

- 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." 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.

- 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.**
- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A.

- 13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition,**

expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

See Attachment A for total annual costs burden.

The Commission anticipates that some AT Persons and clearing member FCMs may incur certain start-up costs in connection with § 1.83(c) and (d). However, the Commission believes that AT Persons and clearing member FCMs largely already implement the risk controls, testing standards and other measures that would be required pursuant to §§ 1.80, 1.81 and 1.82. Retention of records relating to such measures is prudent business practice and the Commission anticipates that many AT Persons and clearing member FCMs already maintain some form of these records in the ordinary course of their business. Accordingly, the Commission believes that AT Persons and clearing member FCMs will adapt their current infrastructure to accommodate new CFTC rules relating to recordkeeping, and AT Persons and clearing member FCMs will not have substantial expenditures related to new recordkeeping technology or re-programming existing recordkeeping technology. The Commission expects that additional expenditure related to §§ 1.83(c) and (d) recordkeeping requirements would be limited to the drafting and maintenance of recordkeeping policies and procedures by in-house counsel and programmer burden hours associated with recordkeeping technology improvements, as well as annual costs in ensuring that recordkeeping policies and procedures and related technology comply with DCM rules.

The Commission estimates that rules pursuant to proposed § 1.83(c) requiring AT Persons to keep and provide books and records relating to §§ 1.80 and 1.81 compliance will result in initial costs of 60 hours of burden per AT Person, and 25,200 burden hours in total. The Commission estimates that an AT Person will incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Compliance Attorney,³ working for 30

³ See Attachment A for list of professions and hourly wages, based on the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013.

hours (30 x \$96 = \$2,880); and 1 Developer, working for 30 hours (30 x \$75 = \$2,250). The 420 AT Persons would therefore incur a total initial cost of \$2,154,600 (420 x \$5,130).

The Commission estimates that rules pursuant to proposed § 1.83(d) requiring clearing member FCMs to keep and provide books and records relating to § 1.82 compliance will result in initial costs of 60 hours of burden per clearing member FCM, and 3,420 burden hours in total. The Commission estimates that a clearing member FCM will incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Compliance Attorney, working for 30 hours (30 x \$96 = \$2,880); and 1 Developer, working for 30 hours (30 x \$75 = \$2,250). The 57 clearing member FCMs would therefore incur a total initial cost of \$292,410 (57 x \$5,130).

For the remaining proposed collection requirements, it is expected that entities will utilize existing software, information technology and systems with respect to Regulation AT's collection of information requirements. Thus, the Commission believes that there will not be additional capital/startup costs or operational/maintenance costs incurred to report the information required by the regulations to the Commission.

- 14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

It is not anticipated that the final regulations will impose any additional costs to the Federal Government.

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

The collections are necessary to avoid prevent disruptions to market integrity, avoid systemic risk and promote responsible innovation and fair competition among boards of trade, other markets and market participants.

- 16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This question does not apply.

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

This question does not apply.

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

This question does not apply.

Attachment A

OMB Control Number 3038-XXXX Regulation Automated Trading

Third Party Reporting or Third Party Recordkeeping Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
1.83(a) – Compliance Reports to DCM	420 AT Persons	1	60	60	\$70.66 ⁴	\$4,240	420	25,200	\$1,780,800
1.83(b) – Compliance Reports to DCM	57 clearing member FCMs	1	110	110	\$64.45 ⁵	\$7,090	57	6,270	\$404,130
1.83(c) – DCM Recordkeeping rules	420 AT Persons	1 (ongoing requirement)	30	30	\$89 ⁶	\$2,670	420	12,600	\$1,121,400
1.83(d) – DCM recordkeeping rules	57 clearing member FCMs	1 (ongoing requirement)	30	30	\$89 ⁷	\$2,670	57	1,710	\$152,190
40.23(c) – Market Participant Submit Approval Requests	420 market participants	1 (intermittent)	60	60	\$63.50 ⁸	\$3,810	420	25,200	\$1,600,200

⁴ 1 Senior Compliance Specialist, working for 50 hours (50 x \$57 = \$2,850) and 1 Chief Compliance Officer, working for 10 hours (10 x \$139 = \$1,390).

⁵ 1 Senior Compliance Specialist, working for 100 hours (100 x \$57 = \$5,700); and 1 Chief Compliance Officer, working for 10 hours (10 x \$139 = \$1,390).

⁶ 1 Compliance Attorney, working for 20 hours (20 x \$96 = \$1,920); and 1 Developer, working for 10 hours (10 x \$75 = \$750).

⁷ 1 Compliance Attorney, working for 20 hours (20 x \$96 = \$1,920); and 1 Developer, working for 10 hours (10 x \$75 = \$750).

⁸ 1 Business Analyst, working for 30 hours (30 x \$52 per hour = \$1,560); and 1 Developer, working for 30 hours (30 x \$75 per hour = \$2,250).

40.23(d) – DCM Publication of Self-Trade Data	15 DCMs	4	25	100	\$66.50	\$6,650 ⁹	60	1,500	\$99,750
Totals of above	492	9	315	390	\$443.11	\$27,130	1,434	72,480	\$5,158,470
Averages of above, where applicable	N/A	1.5	52.5	N/A	\$73.85	\$4,521.6	N/A	N/A	N/A

The following professions and hourly wages are referenced in the tables above.¹⁰

2013 SIFMA Report Profession and Code	Description of Role in Related Matters	Total mean 2012 compensation with bonus- 2013 SIFMA Report	Hourly wage rate (rounded) ¹¹
Project Manager (1030)	Project Manager	\$97,138 ¹²	\$70
Business Analyst (Intermediate) (602)	Business Analyst	\$72,650 ¹³	\$52
Business Analyst (Intermediate) (602)	Tester	\$72,650 ¹⁴	\$52
Programmer Analyst (Senior) (1607)	Developer	\$103,851 ¹⁵	\$75
Compliance Examiner (Senior) (409)	Senior Compliance Examiner	\$79,992 ¹⁶	\$58
Compliance Specialist (Senior) (406)	Senior Compliance Specialist	\$78,250 ¹⁷	\$57

⁹ 1 Senior Compliance Examiner, working for 50 hours (50 x \$58 per hour = \$2,900); and 1 Developer, working for 50 hours (50 x \$75 per hour = \$3,750).

¹⁰ The hourly wage rates are based on salaries and bonuses across different professions that are listed in the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The SIFMA Report on Management & Professional Earnings in the Securities Industry 2013 is available at <http://www.sifma.org/research/item.aspx?id=8589940603>.

¹¹ The hourly wage rate represents the total mean 2012 compensation with bonus divided by 1800 hours and multiplied by 1.3 to account for overhead and other benefits.

¹² See 2013 SIFMA Report, *supra* note 566, at 273.

¹³ See *Id.* at 136.

¹⁴ *Id.*

¹⁵ See *Id.* at 395.

¹⁶ See *Id.* at 113.

¹⁷ See *Id.* at 104.

Chief Compliance Officer (Mutual Funds/ Investment Advisory Services) (413)	Chief Compliance Officer	\$192,367¹⁸	\$139
Compliance Attorney (1103)	Compliance Attorney	\$133,059¹⁹	\$96

¹⁸ See *Id.* at 119.

¹⁹ See *Id.* at 279.