

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

OMB CONTROL NUMBER 3038-0093

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.

The Commission is seeking to amend control number 3038-0052. The Commission's existing regulations under Part 40 (including §§ 40.2, 40.3, 40.4, 40.5, 40.6 and 40.10) provide procedures for the submission of rules and rule amendments by DCMs and other registered entities. They establish the procedures for submitting the "written certification" required by Section 5c of the Act. In connection with a product or rule certification, the registered entity must provide a concise explanation and analysis of the submission and its compliance with statutory provisions of the Act. Accordingly, new rules or rule amendments must be accompanied by concise explanations and analyses of the purposes, operations, and effects of the submissions. This information may be submitted as part of the same submission containing the required "written certification."¹

¹ Regulation 40.10 also contains submission procedures for certain risk-related rules proposed by a systemically important derivatives clearing organization ("SIDCO"). The SIDCO regulations require, among other things, 60-

The explanation and analysis is necessary for regulatory purposes. Product and rule submissions sometimes include minimal supporting analyses and, in certain cases, no evidentiary basis for certifications of compliance at all. Without prompt receipt of supporting information, staff must expend significant resources and time to replicate an existing analysis or to otherwise independently establish a product or rule's compliance with applicable law. The regulations permit registered entities to support product and rule certifications in the manner that is most effective and least costly under the circumstances.

Proposed **§ 40.25(a)** would require that, when submitting a rule regarding a market maker or trading incentive program pursuant to § 40.5 or § 40.6, a DCM must, in addition to information required by such sections, include the following information in its public rule filing: (i) the name of the market maker program or trading incentive program, the date on which it will begin, and the date on which it will terminate (if applicable); (ii) an explanation of the specific purpose for the program; (iii) a list of the product(s) the trading of which is eligible for benefits under the market maker or trading incentive program, and list of the service(s) that a market participant should render to the DCM to receive benefits under the market maker or trading incentive program (e.g., trading at certain hours; trading originating from certain geographic zones; trading originating with certain types or categories of market participants; or the bid/ask spread to be maintained by a market participant); (iv) a description of any eligibility criteria or categories of market participants defining who may participate in the program; (v) for any market maker or trading incentive program that is not open to all market participants, an explanation of why the program is limited to the chosen eligibility criteria or categories of market participants, and an explanation of how such limitation complies with the impartial access and comparable fee structure requirements of § 38.151(b) for DCMs; (vi) an explanation of how persons eligible for the market maker or trading incentive program may apply to participate, and how eligibility will be evaluated by the DCM; (vii) a description of any payments, incentives, discounts, considerations, inducements or other benefits that program participants may receive, including any non-financial incentives (non-financial incentives may include, for example, enhanced trading priorities or preferential access to market data, including order and trade data); (viii) a description of the obligations, benchmarks, or other measures that a participant in a market maker or trading incentive program must meet to receive the benefits described in paragraph (a)(vii) of this section; and (ix) a description of any legal affiliation between the DCM and any entity acting as a market maker or participating in a market maker or trading incentive program. The proposed regulations would amend existing § 40.1(i) to make clear that market-maker and trading incentive programs are “rules” for purposes of part 40, and therefore subject to part 40's rule filing requirements.

Proposed **§ 40.25(b)** would require that, in addition to any public notice required pursuant to part 40 (including without limitation the requirements of § 40.5(a)(6) and § 40.6(a)(2)), a DCM must ensure that the information required by § 40.25(a)(i)–(viii) is easily located on its public website during the lifetime of the market maker or trading incentive program, that is,

days advance notice of proposed rules that may materially affect the nature or level of risk presented by the SIDCO. The information collections required by § 40.10 should be only minimally burdensome for registered entities.

from the time that the DCM begins accepting participants in the program through the time the program ceases operation.

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.²

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 requested information is essential to the staff's review of submissions and the Commission's oversight of each DCM's market maker and trading incentive program. Staff generally conducts a due diligence review of new rule submissions and makes an independent determination concerning the registered entity's compliance with the Act and regulations thereunder. The Commission will use the data it would receive pursuant to § 40.25 to determine whether market maker and trading incentive programs may potentially lead to abusive trading practices in violation of DCM and Commission rules.

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 Commission's regulations require all submissions to be submitted to the Commission 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.

The collection of information pursuant to § 40.25 would require information from DCMs regarding their market-maker or trading incentive programs. The Commission believes it largely

² Additional proposed regulations pursuant to Regulation AT requiring a collection of information are addressed in separate OMB submissions and supporting statements that amend existing or create new information collections.

incorporates existing rule filing requirements in part 40. However, the proposed rule would add important clarity to existing rule filing requirements when such filings pertain to market-maker or trading incentive programs.

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.

This collection of information will not have a significant impact on a substantial number of small entities.

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.

Proposed § 40.25 does not require the submission of information on a periodic basis. Rather, submissions are required only at such time that DCMs seek to implement a market maker or trading incentive program.

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;**

Not applicable.

- **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;**

Not applicable.

- **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.

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.

Proposed § 40.25 would add important clarity to existing rule filing requirements when such filings pertain to market-maker or trading incentive programs.

- 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 3038-0093 (Part 40, Provisions Common to Registered Entities)

Reporting 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)
40.25	15	1 (intermittent)	156	156	\$96 ³	\$14,976	15	2,340	\$224,640

³ 1 Compliance Attorney, working for 156 hours (156 x \$96 = \$14,976).

The following professions and hourly wages are referenced in the tables above.⁴

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) ⁵
Project Manager (1030)	Project Manager	\$97,138 ⁶	\$70
Business Analyst (Intermediate) (602)	Business Analyst	\$72,650 ⁷	\$52
Business Analyst (Intermediate) (602)	Tester	\$72,650 ⁸	\$52
Programmer Analyst (Senior) (1607)	Developer	\$103,851 ⁹	\$75
Compliance Examiner (Senior) (409)	Senior Compliance Examiner	\$79,992 ¹⁰	\$58
Compliance Specialist (Senior) (406)	Senior Compliance Specialist	\$78,250 ¹¹	\$57
Chief Compliance Officer (Mutual Funds/ Investment Advisory Services) (413)	Chief Compliance Officer	\$192,367 ¹²	\$139
Compliance Attorney (1103)	Compliance Attorney	\$133,059 ¹³	\$96

⁴ 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>.

⁵ 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.

⁶ See 2013 SIFMA Report, *supra* note 566, at 273.

⁷ See *Id.* at 136.

⁸ *Id.*

⁹ See *Id.* at 395.

¹⁰ See *Id.* at 113.

¹¹ See *Id.* at 104.

¹² See *Id.* at 119.

¹³ See *Id.* at 279.