

## **UPDATED ANSWER TO #8**

A Federal Register Notice soliciting comments on this collection was published in the *Federal Register* (76 FR 1214, January 7, 2011). A record of all public comments received is available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=955>.

While no commenter directly addressed the proposed aggregate burden hour estimate, the Commission did receive comments related to the costs of various recordkeeping and reporting requirements in the proposed rules.

WMBAA commented that the Commission could reduce the regulatory burden of the registration procedures by reconciling its Form SEF with the SEC's registration form such that a potential SEF will have to fill out only one form. Similarly, MarketAxess stated that it is costly and inefficient for a SEF that is required to be registered by both the Commission and SEC to go through two full registration processes, and that the Commission instead should permit "notice" or "passport" registration of an SB-SEF already registered with the SEC. While the Commission acknowledges notice registration under section 5h(g) of the Commodity Exchange Act, it notes that the registration requirements for SEFs may differ from the registration requirements for SB-SEFs and thus the Commission must conduct an independent review of a SEF applicant's registration application to ensure that the potential SEF's proposed trading models and operations comply with the Commission's requirements. Given such differing requirements, the Commission also notes that Form SEF may differ from the SEC's registration form.

With respect to temporary registration, the Commission has eliminated the requirement from the SEF NPRM that an applicant provide transaction data that substantiates that the execution or trading of swaps has occurred and continues to occur on the applicant's trading system or platform at the time the applicant submits its temporary registration request. The Commission has also eliminated the certification requirement that an applicant believes that when it operates under temporary registration it will meet the requirements of part 37 of the Commission's regulations. Instead, the Commission has revised the temporary registration provisions to require a SEF applicant that is already operating a swaps-trading platform, in reliance upon either an exemption granted by the Commission or some form of no-action relief granted by the Commission staff, to include in the temporary registration notice a certification that it is operating pursuant to such exemption or no-action relief. The Commission believes that these revisions will not materially affect the proposed part 37 information collection estimate.

CME commented that the proposed product and rule certification process substantially increased the documentation burden, which in turn would increase the cost and amount of time it takes to list new products and implement new rules, with no corresponding benefit to the public. While CME cited the 8,300 additional aggregate hours that product and rule submissions were estimated to impose on all registered entities, the Commission notes that this figure was already accounted for in the Commission's information collection estimate in the part 40 rulemaking titled "Provisions Common to Registered Entities." Therefore, the burden associated with that information collection is not duplicated here.

CME commented that the “level of immediacy” contemplated by the 24-hour timeframe for submitting agreements with the notification to the Commission of an equity interest transfer in proposed § 37.5(c) may be unrealistic. CME further commented that the representation of compliance with the requirements of CEA section 5h and the Commission’s regulations adopted thereunder would be more appropriate if required upon consummation of the equity interest transfer, rather than with the initial notification. In this final rulemaking, the Commission has revised proposed § 37.5(c) to remove references to specific documents that must be provided with the equity transfer notification, and instead provided that the Commission may request supporting documentation. The Commission has also revised the proposed rule to increase the threshold of when a SEF must file an equity interest transfer notification with the Commission from ten percent to fifty percent and has extended the time period for a SEF to file the notification to up to ten business days from one business day under the proposed rule. In addition, the Commission has deleted the requirement for a SEF to provide a representation of compliance with section 5h of the Commodity Exchange Act and the Commission regulations thereunder with the equity interest transfer notification, as requested by CME. The Commission notes that these revisions should slightly reduce the burden of the information collection requirements for those respondents who are not requested to provide supporting documentation.

CME stated that it would be costly for a SEF to obtain every customer's consent to its regulatory jurisdiction as required by proposed § 37.202(b). As noted in the preamble to the final rule, the Commission believes that jurisdiction must be established by a SEF prior to granting members and market participants access to its markets in order to effectuate the statutory mandate of Core Principle 2 that a SEF shall have the capacity to detect, investigate, and enforce rules of the SEF. The Commission notes that any information collection costs associated with this rule is covered by the Commission’s information collection estimate.

CME stated that minor transgressions could be handled effectively through the issuance of a warning letter rather than a formal investigatory report. In the preamble to the final rule, the Commission clarifies that warning letters may be issued for minor transgressions; however, no more than one warning letter may be issued to the same person or entity found to have committed the same rule violation more than once within a rolling 12-month period. The Commission also clarifies that the limit on the number of warning letters is not applicable when a rule violation has not been found. The Commission believes that these clarifications will not materially affect the proposed part 37 information collection estimate.

WMBAA commented that the proposed audit trail requirement in § 37.205(b) to retain records of customer orders should not apply to indicative quotes because it would be burdensome and costly. As discussed in the preamble to the final rule, the Commission believes that this requirement is necessary so that a SEF has a complete picture of all trading activity in order to carry out its statutory mandate to monitor its markets to detect abusive trading practices and trading rule violations. The Commission accounted for this recordkeeping requirement in the proposed burden hour estimate; therefore, the estimate remains unaffected.

WMBAA commented that the requirement for SEFs to mandate that traders maintain trading and financial records is not required under the Commodity Exchange Act. The Commission notes that market participants’ trading records are an invaluable tool in its

surveillance efforts and believes that a SEF should have direct access to such information in order to discharge its obligations under the SEF core principles. However, as noted in the preamble to the final rule, the Commission states in the guidance that SEFs may limit the application of this requirement to those market participants who conduct substantial trading on their facility. The Commission notes that the requirement for market participants to keep such records is sound commercial practice, and that market participants are likely already maintaining such trading records; therefore, the Commission believes that the revision above will not materially affect the proposed part 37 information collection estimate.

FXall commented that SEFs would be burdened by the “onerous financial surveillance obligations” of proposed § 37.703, which include the routine review of members’ financial records. The Commission agrees that burdensome financial surveillance obligations may lead to higher transaction costs; therefore, the Commission has revised the proposed rule to state that SEFs must monitor their market participants to ensure that they continue to qualify as Eligible Contract Participants. The Commission believes that this revision will not materially affect the proposed part 37 information collection estimate and is thus maintaining the estimate.

MarketAxess commented that the financial resources reporting requirements are unnecessary and burdensome and recommended that the Commission allow a senior officer of the SEF to represent to the Commission that it satisfies the financial resources requirements. The Commission disagrees with MarketAxess and, as discussed in the preamble to the final rule, believes that much of the information required by the reports should be readily available to a SEF in the ordinary course of business. The Commission’s proposed burden hour estimate includes this reporting requirement.

CME commented that the requirements to notify the Commission staff of all system security-related events and all planned changes to automated systems that may impact the reliability, security, or scalability of the systems are overly burdensome. As noted in the preamble to the final rule, the Commission has revised the rule to only require notification of material system malfunctions and material planned system changes. While these revisions should decrease the regulatory burden imposed by the rule, the Commission believes that, given the infrequent nature of the information collection requirement as originally proposed, the effect of the revisions should be de minimis and therefore not affect the proposed burden hour estimate.

FXall commented that the information required by the proposed regulations to be included in the annual compliance report is too detailed and will be too costly to compile. The Commission is not persuaded by FXall’s comment, and notes that the annual compliance report is meant to be the primary tool by which the Commission can evaluate the effectiveness of a SEF’s compliance and self-regulatory programs, thus requiring a high level of detail. The Commission’s proposed burden hour estimate includes the annual compliance report requirement.

## **UPDATED ANSWER TO #12**

The Commission estimates that each SEF respondent will have an average annual reporting burden of 308 hours. In deriving this estimate, the Commission compared the reporting requirements for other entities that fall under the Commission's regulatory oversight, such as an exempt commercial market with a significant price discovery contract ("SPDC ECM"), a derivatives transaction execution facility ("DTEF"), and a designated contract market ("DCM"). Specifically, the Commission estimated that a SEF will have more reporting requirements than a SPDC ECM and a DTEF, but fewer reporting requirements than a DCM.

The Commission estimates that 35 SEFs will register with the Commission. Therefore, the Commission estimates the annual aggregate hour burden for all respondents will be 10,780 hours (308 average hours per respondent x 35 respondents). Based on an hourly rate of \$54, the Commission estimates that respondents may expend up to \$16,632 annually to comply with the proposed regulations. This would result in an aggregate cost across all SEF respondents of \$582,120 per annum.

In arriving at a wage rate of \$54 for the hourly costs imposed, the Commission consulted the Management and Professional Earnings in the Securities Industry Report, published in 2011 by the Securities Industry and Financial Markets Association (SIFMA Report). The wage rate is a composite (blended) wage rate arrived at by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, a Senior Programmer, and a Senior Treasury/Cash Management Manager as published in the SIFMA Report and dividing that figure by 2,000 annual work hours to arrive at the hourly rate of \$54.