SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0059

A. 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.

Section 4d(c) of the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. § 6d(c), requires the CFTC to consult with the Securities and Exchange Commission ("SEC") and issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to firms that are fully registered with the SEC as brokers or dealers and the CFTC as futures commission merchants ("FCMs") involving provisions of the CEA that pertain to the treatment of customer funds. The CFTC, jointly with the SEC, issued regulations requiring such dually-registered firms to make choices as to how its customers' transactions in security futures products ("SFP") will be treated, either as securities transactions held in a securities account or as futures transactions held in a futures account. How an account is treated is important in the unlikely event of the insolvency of the firm. Only securities accounts receive insurance protection under provisions of the Securities Investor Protection Act. By contrast, only futures accounts are subject to the protections provided by the segregation requirements of the CEA.

Commission regulation 41.41, in relevant part, sets forth recordkeeping and reporting requirements that FCMs must fulfill with respect to SFP accounts. For instance, Commission regulation 41.41(b) requires that FCMs, prior to accepting the first order for an SFP from or on behalf of a customer, furnish such customer with a disclosure document containing the information enumerated in the regulation. Such information is necessary to ensure that SFP accounts are handled appropriately, and that each customer is informed of the protections available to SFP accounts and of the manner in which such customer's SFP account is being protected.

Section 5c of the CEA, as amended by section 745 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), provides the procedures for the submission of rules and rule amendments by designated contract markets ("DCMs"), swap execution facilities, derivatives clearing organizations ("DCOs"), and swap data repositories.

Section 5c(c)(1) of the Act, as amended by Dodd-Frank, reads as follows:

> A registered entity may elect to list for trading or accept for clearing any new contract**,** or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission . . . a written certification that the new

contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act) (emphasis added).

Commission regulations 41.23 and 41.24 establish the procedures for submitting the "written certification" required by section 5c of the Act with respect to SFPs. In connection with the product or rule certification, the DCM or DCO 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 statutorily required "written certification."

The explanation and analysis is necessary for administrative purposes. 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.

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.

Commission regulation 41.3 provides the procedures for FCMs and introducing brokers to follow in applying to the Commission for an exemptive order pursuant to section 4f(a)(4)(B) of the Act. Information that must be filed with the Commission includes an explanation of the facts and circumstances under which the applicant believes the exemptive relief is necessary or appropriate and in the public interest as well as an explanation about whether the requested relief is consistent with the protection of investors. This information is necessary in order for the Commission to make an informed decision with respect granting or denying the request.

For new SFPs, a DCM must submit information complying with § 41.23 as follows:

- § 41.23(a)(1) – (a)(6) generally requires a filing that: (1) is labeled "Listing of Security Futures Product;" (2) a copy of the product's rules, including its terms and conditions; (3) the certifications required by § 41.22; (4) a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25; (5) a certification that the SFP complies with the Act and rules thereunder; and (6) a copy of the submission cover sheet in accordance with the instructions in appendix D of Part 40.
- § 41.23(b) permits a DCM to request that the Commission approve any SFP under the procedures of § 40.5 (a concise explanation and analysis of the new product and its compliance with applicable law).

These regulations are necessary to the Commission's administration of the Act, which requires new contracts to, among other things, not be susceptible to manipulation and have specified

position limits or accountability levels. Without explanations and analyses of new submissions, the Commission cannot effectively exercise its oversight responsibilities under the Act.

For general rules and rules implementing changes to the terms and conditions of products, a DCM or DCO must comply with § 41.24 as follows:

- § 41.24(a)(1) – (a)(5) generally requires a filing that: (1) is labeled "Security Futures Product Rule Submission;" (2) a copy of the new rule or rule amendment; (3) a certification that the DCM or DCO has filed the rule or rule amendment with the SEC; (4) includes certifications required to be filed with the Commission pursuant to § 40.6, including a certification that the SFP complies with the Act and rules thereunder; and (5) a copy of the submission cover sheet in accordance with the instructions in appendix D of Part 40.

- § 40.24(b) generally permits a DCM or DCO to request that the Commission approve any rule or proposed rule or rule amendment relating to the SFP under the procedures of § 40.5 (a concise explanation of the rule or rule amendment and its compliance with the applicable law).

Relatedly, §§ 41.27(c) and 41.27(e) require a DCM to file rule submissions with respect to dual trading with the Commission in accordance with the procedures of §§ 40.5 and 40.6. Moreover, § 41.49 requires a DCM to file rule changes with the Commission regarding customer margin for SFPs with the Commission.

All of the regulations pertaining to rule submissions are necessary to the Commission's administration of the Act. The requested information is essential to the staff's review of submissions and the Commission's oversight of each DCM's self-regulatory actions. Staff generally conducts a due diligence review of rule submissions and makes an independent determination concerning the DCM's compliance with the Act and regulations thereunder.

Next, a DCM has the discretion to request confidential treatment pursuant to §§ 41.23(a)(7) and 41.24(a)(6) for rule and product submissions. These requests are analyzed by Commission staff and form the basis in determining whether a DCM's request confidential treatment should be granted or denied.

Regulation 41.31 provides the procedures for any board of trade that is a national securities exchange, national securities association, or an alternative trading system, and that seeks to operate as a DCM in SFPs to notify the Commission. This promotes regulatory certainty, assists in ensuring appropriate oversight of SFPs, and encourages less duplicative and more effective regulation by the Commission and the SEC.

Finally, § 41.41 requires persons registered with the Commission as an FCM pursuant to section 4f(a)(1) of the Act to provide customers with a disclosure document prior to accepting the first order for the SFP from or on behalf of the customer.

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 Part 41 regulations permit information to be submitted electronically. Additionally, the Commission intends to continue its practice of publishing all incoming rule and product submissions on its website. The Commission also intends to facilitate submissions and public comment on such submissions through the Commission's 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.

The regulations require a DCM to submit certain information such as product terms and conditions, rule changes (DCMs or DCOs) and explanations of the operation, and purpose and effect of such changes that is not available from any other source and generally is specific to the DCM or DCO.

5. If the collection of information impacts 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.

The Commission's Part 41 regulations do not require the submission of information on a periodic basis. Rather, submissions are required only at such time that a DCM seeks to take one or more actions that require a filing with the Commission.

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;**

A DCM is required to submit information to the Commission each time a new rule, rule amendment or product is adopted by the entity, or whenever a DCM seeks approval of a new rule, rule amendment or product.

- **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;**

Not applicable.

- **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, § 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 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**

Not applicable.

- **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.**

In certain circumstances, a DCM must provide proprietary information in order for Commission staff to review rules and products for compliance with the Act and Commission regulations. A DCM may request confidential treatment pursuant to the procedures of § 40.8 and § 145.9 of 17 CFR Chapter 1.

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.

A copy of the Federal Register notice soliciting comments on this collection is attached. The 60-day notice soliciting comments was published on August 4, 2017. No relevant comments were received.

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 is seeking public comments on the collection of information.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 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.

Not applicable.

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

Not applicable.

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

The Commission does not provide respondents with an assurance of confidentiality. However, the Commission must comply with section 8(a)(1) of the Act, which strictly prohibits the Commission, unless specifically authorized by the 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." Commission regulations 41.23(a)(7) and 41.24(a)(6) allow DCMs to request confidential treatment of information submitted pursuant to the procedures of §§ 40.8 and 145.9.

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.

None of the regulations 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 this 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 hour 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. The Commission estimates that approximately 44 respondents will file a total of 943 responses annually with a total burden of 1,481.60 hours. The estimated average number of hours per response is 1.57.

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 cost 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.

Total costs are estimated to be $103,712 (using a $70.00 per hour compliance officer figure).

14. Provide estimates of the annualized cost 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 regulations require no new start-up or operations and maintenance costs.

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

The adjustments are based on the Commission's experience from approximately the past 10 years of receiving product and rule submissions pursuant to §§ 41.23, 41.24, and 41.49. The revisions reflect the average number of filings received by the Commission annually during this timeframe. The adjustments are also based on the Commission's current estimate of the number of FCMs that engage in business subject to Commission regulation 41.41.

16. For collections 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.

Not applicable.

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.

Not applicable.

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

Not applicable.

ATTACHMENT A

Part 41 – Security Futures Products

OMB Collection #3038-0059

	Estimated # of Respondents or Recordkeepers Per Year	Reports Annually by Each Respondent	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden In Fiscal Year
Reporting					
41.3 Application for exemption by intermediaries	5	1	5	25	125
41.23(a)(1)-(6) and 41.23(b) Listing of SFPs	3	146	438	2	876
41.24(a)(1)-(5) and 41.24(b) Rule amendments	3	8	24	2	48
41.23(a)(7) and 41.24(a)(6) Requests for confidential treatment	3	.30	.90	2	1.80
41.27(c) Rules prohibiting dual trading	1	1	1	2	2
41.27(e) Rules permitting exemptions	1	1	1	2	2
41.31 SFPCM designation (one time only)	1	1	1	5	5
41.32 SFPCM continuing obligations	3	20	60	4	240
41.33 Application for exemption by SFPCM	1	1	1	40	40
41.41 FCM/B-D disclosure	10	40	400	.25	100
41.49 Margin rule changes	3	.30	.90	2	1.80
Subtotal Reporting Requirements	***34***		***932.80***		***1,441.60***
Recordkeeping					
41.41(a)(2) Policies and	10	1	10	4	40

procedures on handling of customer accounts					
Subtotal Recordkeeping Requirements	*10*	*1*	*10*	*4*	*40*
TOTAL REPORTING AND RECORDKEEPING	***44***		***942.80***	***1.57***	***1,481.60***