

**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.**

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 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.

¹ 7 U.S.C. 1 *et seq.*

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In addition, this revised information collection 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.

This collection revises control number 3038-0052 with respect to the following specific existing Part 38 provisions: §§ 38.401 and 38.5.

Existing § 38.401 requires DCMs to have procedures, arrangements, and resources for disclosing to the Commission, market participants, and the public accurate information on, among other things, the rules and specifications concerning the operation of the DCM's electronic matching platform or trade execution facility. Amended § 38.401 would extend the disclosure requirements to cover certain attributes of the operation of electronic matching platforms. Specifically, proposed § 38.401(a)(1)(iii) would require DCMs to disclose to the Commission, market participants and the public accurate information pertaining to rules or specifications pertaining to the operation of the electronic matching platform or trade execution facility, including but not limited to those pertaining to the operation of its electronic matching platform that materially affect the time, priority, price, or quantity of execution, or the ability to cancel, modify, or limit display of market participant orders. Proposed § 38.401(a)(iv) would require DCMs to disclose to all market participants any known attributes of the electronic matching platform, other than those already disclosed in rules or specifications under section (a)(1)(iii), that materially affect the time, priority, price, or quantity of execution of market participant orders, the ability to cancel, modify, or limit display of market participant orders, or the dissemination of real-time market data to market participants, including but not limited to latencies or other variability in the electronic matching platform and the transmission of message acknowledgements, order confirmations, or trade confirmations, or dissemination of market data. Proposed § 38.401(c)(3) requires that a DCM, in making available on its website information pursuant to paragraphs (a)(1)(iii) and (iv) of § 38.401(c), must place such information and submissions on its website within a reasonable time, but no later than 10 business days, following the identification of or changes to such attributes.

Proposed § 40.26 is a more targeted iteration of existing § 38.5, which requires a DCM to file with the Commission such "information related to its business as a designated contract market" as the Commission may require. Section 38.5 also requires a DCM upon request by the Commission or the director of DMO to file "a written demonstration" that the DCM "is in compliance with one or more core principles as specified in the request" or "satisfies its obligations under the Act," including "supporting data, information and documents." Proposed § 40.26 does not alter a DCM's existing obligations under § 38.5, but rather makes clear that Commission and DMO information requests may pertain specifically to market-maker and trading incentive programs. Proposed § 40.26 would require that, upon request by the

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Commission or the Director of the Division of Market Oversight, a DCM must provide such information and data as may be requested regarding participation in market maker or trading incentive programs offered by the DCM, including but not limited to, individual program agreements, names of program participants, benchmarks achieved by program participants, and payments or other benefits conferred upon program participants.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 Commission will continue to use all information previously collected under OMB Control Number 3038-0052.

With respect to proposed §§ 38.401(a)(1)(iii) and (iv) and 38.401(c)(3), this data disclosed by DCMs to the Commission and market participants would ensure that each market participant has ready access to information that explains the existence and operation of any attribute within an electronic matching platform or trade execution facility that will impact how a market participant experiences the market. The proposed amendments recognize that the structure, architecture, mechanics, characteristics, attributes, or other elements of an electronic matching platform or trade execution facility—elements that are under the design control of the DCM—may affect how market participant orders are received or executed.

With respect to proposed § 40.26, the Commission will use the data 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 collections of information described above may be reported electronically, as electronic submissions to the CFTC or posting on DCM websites, as applicable.

- 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.**

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.

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The information collection pursuant to §§ 38.401(a)(1)(iii) and (iv) and 38.401(c)(3) amends existing § 38.401 to add new, additional disclosure requirements. Accordingly, such requirements are not duplicative.

The information collection pursuant to § 40.26 serves in large part to emphasize existing regulatory requirements and Commission or staff authorities. The proposed rule is necessary to make clear that Commission and DMO information requests may pertain specifically to market-maker and 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.

The required information collected under this OMB Control Number does not involve any small businesses or other small entities. The Commission has established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the Regulatory Flexibility Act (RFA). The Commission previously determined that DCMs are not small entities for the purpose of the RFA.

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 frequency of collection requirements reflect the Commission’s balancing of its goal increased transparency and risk reduction against the burden placed on the affected. The frequency of collection depends on the nature of a DCM’s trading activity, trading systems, or programs. 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.

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 Commission believes that changes to DCM electronic matching platforms relevant to its amendments to § 38.401 have the potential to impact market participants’ trading. Unlike in the days of floor trading, the architecture of the matching engine is relevant to a market participant’s trading decisions. Accordingly, to the extent any DCM makes frequent changes to their systems that implicate § 38.401 disclosure requirements, it is possible website updates may occur more frequently than on a quarterly basis.

As to § 40.26, the Commission’s inquiries concerning a DCM’s market maker or trading incentive program may occur more frequently than a quarterly basis, depending on the nature of

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a DCM's programs and the Commission's level of concern that any aspect of the program could potentially lead to abusive trading practices in violation of DCM and Commission rules.

- **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 assess a DCM's market maker or trading incentive program, a request for information pursuant to § 40.26 may require the collection and presentation of information 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 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;**

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;**

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.**

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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:**

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- **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.**

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- **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.**

The additional information collection pursuant to amended § 38.401 is necessary to ensure that each market participant has ready access to information that explains the existence and operation of any attribute within an electronic matching platform or trade execution facility that will impact how a market participant experiences the market. The proposed amendments recognize that the structure, architecture, mechanics, characteristics, attributes, or other elements of an electronic matching platform or trade execution facility—elements that are under the design control of the DCM—may affect how market participant orders are received or executed.

Proposed § 40.26 does not alter a DCM’s existing obligations under § 38.5, but rather makes clear that Commission and DMO information requests may pertain specifically to market-maker and 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.**

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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 3038-0052
Core Principles and Other Requirements for DCMs

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)
40.26	15	0 ³	0	0	0	0	0	0	0

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)
38.401(a) & (c)	15	1 (intermittent)	200	200	\$96 ⁴	\$19,200	15	3,000	\$288,000

³ § 40.26 will impose no additional PRA burdens on DCMs as it is a more targeted iteration of existing § 38.5. Proposed § 40.26 makes clear that Commission and DMO information requests may pertain specifically to market-maker and trading incentive programs. It imposes no new obligation to provide information, and does not increase the frequency which information must be provided.

⁴ 1 Compliance Attorney, working for 200 hours (200 x \$96 = \$19,200).

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The following professions and hourly wages are referenced in the tables above.⁵

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) ⁶
Project Manager (1030)	Project Manager	\$97,138 ⁷	\$70
Business Analyst (Intermediate) (602)	Business Analyst	\$72,650 ⁸	\$52
Business Analyst (Intermediate) (602)	Tester	\$72,650 ⁹	\$52
Programmer Analyst (Senior) (1607)	Developer	\$103,851 ¹⁰	\$75
Compliance Examiner (Senior) (409)	Senior Compliance Examiner	\$79,992 ¹¹	\$58
Compliance Specialist (Senior) (406)	Senior Compliance Specialist	\$78,250 ¹²	\$57
Chief Compliance Officer (Mutual Funds/ Investment Advisory Services) (413)	Chief Compliance Officer	\$192,367 ¹³	\$139
Compliance Attorney (1103)	Compliance Attorney	\$133,059 ¹⁴	\$96

⁵ 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>.

⁶ 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.

⁷ See 2013 SIFMA Report, *supra* note 566, at 273.

⁸ See *Id.* at 136.

⁹ *Id.*

¹⁰ See *Id.* at 395.

¹¹ See *Id.* at 113.

¹² See *Id.* at 104.

¹³ See *Id.* at 119.

¹⁴ See *Id.* at 279.