

SUPPORTING STATEMENT FOR INFORMATION COLLECTION RENEWAL

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.

The Commission's regulations §§ 40.2, 40.3, 40.5, 40.6 and 40.10 provide procedures for the submission of product terms and conditions, rules and rule amendments by designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. 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

Without receipt of this information from registered entities, staff would have to 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.

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-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.

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 registered entity's self-regulatory actions. Staff generally conducts a due diligence review of new submissions and makes an independent determination concerning the registered entity's compliance with the Act and regulations thereunder.

For new products, registered entities must submit information complying with either § 40.2 or § 40.3 as follows:

- § 40.2 requires: (1) a concise explanation and analysis of the new product and its compliance with applicable law (with appropriate references to data sources) and (2)

a certification that the submission was posted on the registered entity's website at the time of filing.

-or-

- § 40.3 requires: (1) an explanation and analysis of the new product and its compliance with applicable law (with appropriate references to data sources) and (2) a certification that the submission was posted on the registered entity's website at the time of filing.

These regulations, as discussed, are necessary to the Commission's administration of the Act, which requires new contracts to, among other things, not be susceptible to manipulation. Without explanations and analyses of new submissions and certain certifications concerning prices and pricing sources, 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, registered entities must comply with either § 40.5 or § 40.6 as follows:

- § 40.5 requires: (1) an explanation and analysis of the purpose, operation, and effect of the proposed rule change; and, for each submission amending the terms and conditions of a previously certified contract and (2) a certification that the submission was posted on the registered entity's website at the time of filing.
- § 40.6 requires two submissions: (1) a concise explanation and analysis of the operation, purpose, and effect of the rule submission; (2) a certification that the submission was posted on the registered entity's website at the time of filing.

These regulations, as discussed, are contemplated by the statute and necessary to the Commission's administration of the Act.

For certain risk management rules of SIDCOs, registered entities must comply with § 40.10 as follows:

- § 40.10 requires two submissions: (1) an advanced notice of any proposed rule changes that may materially affect the nature or level of risks presented by a systemically important derivatives clearing organization; and (2) if requested, supplementary information that is necessary for the Commission's staff to review in order to assess the effect of any proposed rule changes.

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. The Commission intends to continue its practice of publishing all incoming submissions on its website and has developed an improved web portal at cftc.gov that expedites

both Commission and public review of submissions. The Commission facilitates 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 statute and regulations require registered entities to submit certain information—product terms and conditions, explanations of the cash market and other aspects of the product and its compliance with applicable law, rule changes and explanations of the operation, purpose and effect of such changes, and notices of the certain risk management rules that is not available from any other source and generally is specific to the registered entity.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 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 40 regulations do not require the submission of information on a periodic basis. Rather, submissions are required only at such time that registered entities seek to list new products or adopt new rules or rule amendments. The frequency of the required submissions depends on the frequency that registered entities seek 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;

This does not apply.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

This does not apply.

- requiring respondents to submit more than an original and two copies of any document;

This does not apply.

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

This does not apply.

- 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;

This does not apply.

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

This does not apply.

- 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 Commission has adopted Freedom of Information Act regulations, 17 C.F.R. Part 145, which implement the federal statute set forth in 5 U.S.C. §552. Both the Freedom of Information Act and the Commission's Part 145 regulations make nonpublic information exempt from disclosure by another federal statute, including Section 8(a) of the CEA. See 5 U.S.C. § 552(b)(3) and 17 C.F.R. § 145.5(c).

- 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.

This does not apply.

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 C.F.R. 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.

The Commission requested comment on the information collection in its *Notice in the Federal Register* at 83 FR 26436 (June 7, 2018). The Commission estimated the burden of collection of information under §§ 40.2, 40.3, 40.5, and 40.6 to be an average of 100 annual rule filings per registered entity; and a time burden of approximately 2 hours for each rule filing in order for entities to compile the necessary information, perform any analysis, draft the rule filing, and submit the filing via the Commission's web portal. The Commission estimated the burden under §40.10 is an average of 2 annual rule filings submitted by each SIDCO with a time burden of approximately 5 hours for each rule filing.

Public comments were received on August 6, 2018, from CME Group and Intercontinental Exchange, Inc. (ICE), on behalf of their registered entities. Both CME Group and ICE recognized the usefulness and necessity of the information collected under part 40 of the Commission's regulations. However, both commenters stated that the Commission's estimate of the proposed collection of information burden on the exchanges is understated. CME Group commented that the Commission's estimates do not represent the time, resources, and efforts required to prepare, finalize, and submit each rule filing. In addition, both exchanges commented that the Commission did not indicate the methodology by which their estimates were derived.

Finally, in order to lessen their burdens, both exchanges made suggestions for changes to the rule certification process. The Commission acknowledges the concerns raised by commenters, particularly the operationally burdensome aspects of the rule filing and submission process for new products, rules, and rule amendments. The Commission notes that it is taking the specific recommendations made by the commenters under advisement.

As to their estimate of burden, the number of rule filings reported in the comments by CME Group and ICE for the year 2017, and with respect to ICE, also for the year 2018, to date, differs from the numbers in the Commission's database. CME states that in 2017, it submitted 1080 product and rule filings. The Commission's database shows that in 2017, CME submitted 568 product and rule filings. CME Group subsequently clarified this discrepancy to Commission staff by noting that each request for confidential treatment that accompanies a rule submission is treated in CME Group's calculation as a separate filing. In contrast, the Commission's system does not treat the requests for confidential treatment as separate rule filings. Because the requests for confidential treatment accompany most of the CME Group filings, the inclusion of these requests in its filings calculation would double the amount of filings and, thus, would likely account for the data difference between the Commission's database and the number provided by CME Group.

ICE reported 266 product and rule filings in 2017, while the Commission's database shows 179 filings for that year. ICE reported that, to date, 380 product and rule filings have been made in 2018, while the Commission's database indicates ICE has made 404 filings so far in 2018. In conversations with ICE, Commission staff believes that the discrepancies in numbers between ICE and the Commission could be attributable to a number of things including, differences in what ICE and the Commission count as a rule filing, and the result of differences in the date a filing is deemed submitted, particularly if submitted at the end or beginning of a calendar year.

Significantly, even if the Commission accepts the filing numbers proffered by ICE and the CME Group, when those numbers are combined and averaged with the significantly lower number of submissions made by many of the other exchanges and registered entities, the proposed average of 100 annual filings per registered entity is not unreasonable, but rather a suitable average annual number. For example, Cantor Futures Exchange made 6 product and rule filings in 2017 and has made 4 product and rule filings thus far in 2018. Eris Exchange, LLC made 6 product and rule filings in 2017 and has made 3 product and rule filings so far in 2018. These exchanges are among others whose filings are substantially lower than those submitted by CME Group and ICE in 2017, and 2018, to date. Additionally, other registered entities of the commenters, such as Swap Data Repositories, typically submit 2 or 3 filings a year and sometimes no such filings.

CME estimates, as follows, the average time burden of the collection of information for specific types of product and rule submissions: each cash-settled new product requires 8-10 hours; each physically-delivered new product requires 20-40 hours; each rule change requires 2-4 hours; each product term and product term and condition amendment requires 2-4 hours; each market maker or incentive program requires 1-2 hours; all weekly notifications collectively require 1 hour; and each 40.10 filing requires between 20 – 60 hours for an initial submission, not inclusive of comments and questions received from the Commission and edits required pursuant, thereto.

In response to CME Group's comment that each cash-settled new product submission requires 8 – 10 hours to prepare and submit, and that each physically-delivered new product submission requires 20 – 40 hours, the Commission is revising its estimated hour burden for §40.2 and §40.3 filings to 21 hours per filing. This estimate was calculated by taking the midpoint between the Commission's previous burden estimate of 2 hours and CME Group's high-end burden estimate of 40 hours' time for submission of physically-delivered new products.

In response to CME Group's comment that each rule submission requires 2-4 hours; each product term and condition amendment requires 2-4 hours; each market maker or incentive program requires 1-2 hours; and all weekly notifications collectively require 1 hour, the Commission is not revising its estimated 2 hours per submission burden for §40.5 and §40.6 filings. Commission staff's position is that the 2 hours per submission estimate is reasonable because many, if not the majority, of rule certification submissions received from CME Group in 2017 were market maker or incentive programs. As noted by CME Group, those submissions require between 1 and 2 hours to prepare and submit.

ICE did not provide alternative estimates for time burden, but instead challenges the discrepancy of the Commission's estimate of 2 hours to prepare filings under §§ 40.2, 40.3, 40.5 and 40.6 in comparison with the 5 hour estimate for filings under §40.10. ICE claims that the information required to be provided by a Designated Contract Market for a new product rule filing is robust, comprehensive and requires, at a minimum, the same amount of time as a §40.10 filing. As noted, the Commission is revising its estimated hour burden for Rule 40.2 and 40.3 filings to 21 hours per filing, and the estimated 2 hour burden for 40.5 and 40.6 filings is maintained.

In response to CME's comment that each § 40.10 filing requires between 20 – 60 hours for an initial submission, not including follow-up to questions received from Commission staff, the Commission is revising the estimated hour burden for § 40.10 submissions to 50 hours per submission. This estimate was calculated by using 40 hours, the mid-point of CME's estimate, and adding 10 hours to allow for any subsequent edits and responses to staff questions. In addition, the Commission is reducing the estimated number of respondents for § 40.10 submissions from three to two, to reflect the current number of SIDCOs.

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 maintains regular contact with regulated entities.

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

This does not apply.

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

This question does not apply.

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. Additionally, the Commission adheres to the restrictions on data release provided by §8(a)(1) of the CEA.

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 the collections do not require the giving of such 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.

The Federal Government will expend no more than normal operating costs as a result of this collection of information.

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

This question does not apply.

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.

No exceptions exist.

Attachment A

**Provisions Common to Registered Entities Under 745 of the Dodd-Frank Act
Estimated Annual Hour and Cost Burden of the Collection of Information**

<u>Rule 40.2 and 40.3 Submissions</u>	Est'd # of Covered Entities	# of Annual Reponses from each entity	Est'd Avg. # of Hrs. to Burden Hours Report	Est'd Total Annual Burden Hrs.	Est'd Annual Total Costs at \$70 per hour
	70	50	21	73,500	\$ 5,145,000 ¹
<u>Rule 40.5 and 40.6 Submissions</u>	Est'd # of Covered Entities	# of Annual Reponses from each entity	Est'd Avg. # of Hrs. to Burden Hours Report	Est'd Total Annual Burden Hrs.	Est'd Annual Total Costs at \$70 per hour
	70	50	2	7,000	\$ 490,000 ²
<u>Rule 40.10 Submissions</u>	Est'd # of Covered Entities	# of Annual Reponses from each entity	Est'd Avg. # of Burden Hours Per Response	Est'd Total Annual Burden Hrs.	Est'd Annual Total Costs at \$70 per hour
	2	2	50	200	\$14,000 ³

¹ 70 entities x 50 responses each x 21 hours x \$70 per hour = \$5,145,000

² 70 entities x 50 responses each x 2 hours x \$70 per hour = \$490,000

³ 2 entities x 2 responses each x 50 hours x \$70 per hour = \$14,000