

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

**OMB CONTROL NUMBER 3038-0069**

Information Management for Derivatives Clearing Organizations

**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 5b(c)(2) of the Commodity Exchange Act (CEA)<sup>1</sup> sets forth core principles with which a derivatives clearing organization (“DCO”) must comply to be registered, and to maintain registration, as a DCO. The Commission has codified these information management requirements in Regulations 39.19, 39.20, 39.21, and 39.22.<sup>2</sup>

Under these regulations, each respondent is required to provide certain reports to the Commission on a daily and annual basis, as well as upon the occurrence of specific events. Each respondent is required to maintain records of activities related to its business as a DCO and to make specified information publicly available.

**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 information received is analyzed by Commission staff and forms a basis for on-going evaluation and oversight of the financial integrity of DCOs and compliance with the CEA and Commission regulations. It informs the Commission concerning whether the Commission should take any action regarding the failure of financial and risk management practices or lack of compliance with the CEA or Commission regulations.

**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.**

Unless there is an emergency situation where the respondent might report to the Commission by telephone, information is required to be submitted electronically.

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<sup>1</sup> 7 U.S.C. 1 *et seq.*

<sup>2</sup> 76 FR 69334 (November 8, 2011).

**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 required information is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available for public disclosure through any other source.

**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. The required information does not involve any small businesses or other 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.**

If the information required under this collection of information were not collected, enforcement of the CEA and Commission rules would be adversely affected.

**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 regulations require respondents to report information to the Commission annually, daily, and episodically, *i.e.*, event specific.

The Commission needs margin data on a daily basis to effectively maintain oversight of a DCO and to be alerted to unusual activity on a timely basis.

Event-specific reporting may or may not be more often than quarterly.

- **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 DCO's compliance with these core principles and related regulations, a DCO may be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation. At all times, the Commission's goal is to protect the integrity of the U.S. clearing system.

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

DCOs are required to submit documents electronically, only once. No hard copies are required.

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

Commission Regulation 1.31(b) expressly requires that books and records required to be kept by the CEA or Commission regulations be retained for certain specified periods. Other than with respect to oral communications and records exclusively created and maintained on paper, the shortest of these periods is five years from the date of creation.

- **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;**

No statistical surveys are involved.

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

The requirements do not involve use of any statistical data classification.

- **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 requirements do not involve an unsupported pledge of confidentiality regarding the collection of data.

- **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.**

The 60-day Federal register notice seeking public comment was published on July 24, 2018.<sup>3</sup> The Commission received no relevant comments on the 60-Day Notice.

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<sup>3</sup> 83 FR 34986 (July 13, 2018).

**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.**

As part of the rulemaking process, the rule was published in the Federal Register. Thus, members of the public, including respondents, were provided an opportunity to comment on the rule and related matters, including issues concerning recordkeeping and other paperwork burdens.

**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.**

No such circumstances are anticipated.

**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. 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.**

This question does not apply. None of the required information is sensitive, 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.**

Total costs are included in the answer to question 12. 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 estimate of the annual cost to the government per respondent is about \$7980 per year. This reflects the cost of staff needed to analyze the information received, as follows: a full time equivalent reviewing for 7 hours per trading day, and an additional 70 hours per year reviewing other required reports at an average salary of \$70 per hour.<sup>4</sup> The total number of hours of review time per respondent each year is 114 hours.<sup>5</sup>

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

The figures in Attachment A have been adjusted to reflect the current number of registered DCOs and to update some of the cost estimates.

**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.

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<sup>4</sup> The estimated average staff compensation was derived from the current base and locality pay structure tables applicable to Commission employees. It was calculated using the average compensation for employees at the relevant staff level in the applicable Commission office.

<sup>5</sup>  $\frac{(7 \text{ hours} \times 250 \text{ trading days}) + 70}{16 \text{ DCOs}} = 114 \text{ hours}$

**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

### Information Management Requirements Applicable to Derivatives Clearing Organizations

#### OMB Collection File 3038-0069

The burden associated with rules implementing information management requirements for derivatives clearing organizations is estimated as follows:

Depending on the expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$46 and \$196 per hour.

#### 1. Collection 3038-0069 – Daily Reporting Requirements for Derivatives Clearing Organizations

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent*
16	250 <sup>6</sup>	4000	0.1	400	\$1,150 <sup>7</sup>

#### 2. Collection 3038-0069 – Annual Reporting Requirements for Derivatives Clearing Organizations

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
16	1	16	2606	41,696	\$510,776 <sup>8</sup>

<sup>6</sup> Indicates the approximate number of trading days in the fiscal year.

<sup>7</sup> Taking into account an average salary of \$46 per hour, which is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"), in the category of programmer/analyst. 16 DCOs x 250 annual responses = 4000 annual responses x 0.1 hours per response = 400 hours. Hours per response (0.1) x 250 responses per respondent = 25 x \$46 per hour = \$1,150.

<sup>8</sup> 16 DCOs x 1 annual response = 16 annual responses x 2606 hours per response = 41,696 hours. One annual response x 2606 hours per response x \$196 per hour = \$510,776 per respondent. DCOs are required to provide audited year-end financial statements. This dollar amount takes into account an hourly cost of \$196, which represents the median per hour audit costs in the 2015 Audit Fee Report prepared by the Financial Executives Research Foundation ("FERF"), <http://www.financialexecutives.org/ferf/download/2015%20Final/2015-018.pdf>. The number of hours per response, which has been used in this burden estimate since 2011, is reasonably consistent with the median audit hours in the FERG report.



**3. Collection 3038-0069 – Event-Specific Reporting Requirements for Derivatives Clearing Organizations**

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
16	4	64	5.6	358.4	\$1,680 <sup>9</sup>

**4. Collection 3038-0069 – Recordkeeping Requirements for Derivatives Clearing Organizations**

Estimated # of Respondents Per Year	Reports Annually by Each	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Respondent
16	1	16	100	1600	\$10,000 <sup>10</sup>

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<sup>9</sup> 16 DCOs x 4 annual responses = 64 annual responses x 5.6 hours per response = 358.4 hours. Four annual responses x 5.6 hours per response x \$75 per hour = \$1,680 per respondent. Taking into account an hourly cost of \$75. Commission staff arrived at this hourly rate using figures from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, which is based on a weighted average of the annual salaries for deputy general counsel (30%) and assistant/associate general counsel (70%).

<sup>10</sup> 16 DCOs x 1 annual response = 16 annual responses x 100 hours per response = 1600 hours. One annual response x 100 hours per response x \$100 per hour = \$10,000 per respondent. According to recent Bureau of Labor Statistics data (May 2017), the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is \$97.82, which is rounded to \$100 per hour in estimating the cost burden of these recordkeeping requirements.