

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0076

Risk Management Requirements 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 CEA 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 risk management requirements in Regulations 39.12, 39.13, 39.14, 39.15, 39.16 and 39.18. Regulation 39.3 requires any person seeking to register as a DCO to submit a completed Form DCO as provided in the appendix to part 39, accompanied by all applicable exhibits.¹

Under these regulations, each respondent is required to maintain records of activities related to its business as a DCO, including all information required to be created, generated, or reported under part 39, including but not limited to the results of and methodology used for all tests, reviews, and calculations. In addition, Regulation 39.18(g) requires a DCO to notify Commission staff of certain exceptional events, including any hardware or software malfunction, cyber security incident, or targeted threat that materially impairs or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or any activation of the DCO's business continuity and disaster recovery plan. Further, Regulation 39.18(h) requires that the DCO provide Commission staff with timely advance notice of planned changes to automated systems that are likely to have a significant impact on the reliability, security, or adequate scalable capacity of such systems, as well as planned changes to the DCO's program of risk analysis and oversight. These notice requirements are incorporated by reference in Regulation 39.19, which establishes the procedure for such notifications. Appendix A to Part 39 includes Form DCO, which standardizes the application process for DCO registration.

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 risk management and 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

¹ 76 FR 69334 (November 8, 2011).

practices or lack of compliance with the CEA. It also is used as the basis for determining whether applicants meet the necessary criteria to register as a DCO.

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.

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 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. 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;**

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 13, 2018.² 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.

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. 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

² 83 FR 32638 (Jul. 13, 2018)

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. There are 3 potential registrants and 16 currently registered DCOs.

Attachment A consists of Tables 1, 2, and 3. The burden estimate in Table 1 applies solely to the 3 potential applicants, whereas the burden estimates in Tables 2 and 3 apply to currently registered DCOs, with figures adjusted from 2015 to the current renewal.

Collection is done on occasion. Total annual burden hours (aggregated from Tables 1, 2, and 3): $1200 + 3.2 + 800 = 2003$ hrs.

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. Estimated annual burden costs for three potential registrants are \$300,000 (\$100,000 x 3) - Table 1).

Estimated annual burden costs for current DCOs = \$80,416 (aggregated from Tables 2 and 3).

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 primary cost to the federal government is the salaries for staff to process the applications received. Based on estimated staff time spent on application reviews completed within the past four years, it is anticipated that on average, approximately 2400 hours will be spent each year on application review. At an estimated average salary cost of \$90 per hour, the annual cost to the government is approximately \$216,000.³

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

For system safeguards reporting pertaining to currently registered DCOs, the total hour burden increases slightly (from 2.8 to 3.2) due to the change from 14 DCOs (in 2015) to the current 16, and total cost burden increases from \$280 to \$416 due to the increased number of DCOs and an updated hourly cost estimate.

³ Using reports generated by CFTC's Financial Management Office.

Similarly, the total recordkeeping burden increases from 700 to 800 hours due to the increase in DCOs, and the total cost burden increases from \$7000 to \$80,000 due to an updated hourly cost estimate. (The original supporting statement's cost burden of \$7000 was based on an hourly rate of \$10 ($\10×700), which was most likely inaccurate and not supported by existing records. The hourly rate of \$100 is based on current (2018) rate, thus $\$100 \times 800 \text{ hrs.} = \$80,000$).

In addition, the total annual cost to the Federal Government has gone up from \$1,200 in 2015 to \$216,000 currently. *See also* response to Item 14 above.

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.

This question does not apply.

Attachment A

Risk Management Requirements and Registration Requirements Applicable to Derivatives Clearing Organizations

OMB Collection File 3038-0076

The burden associated with rules implementing risk management requirements for registered DCOs and the Form DCO for DCO applicants is estimated as follows:

Commission staff estimates that all respondents could expend in the aggregate \$100,000 initially to comply with the proposed regulations. Depending on the expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$400 per hour.

1. Collection 3038-0076 –Derivatives Clearing Organization Applicants Reporting Requirement (Regulation 39.3 and Form DCO)⁴

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
3	1	3	400	1200	\$100,000*

* Taking into account an average salary of \$75-400 per hour, the calculation uses \$250. In the Commission's experience, DCO applicants often hire outside counsel to prepare and submit their applications. While the Commission is uncertain about the billing rates that these entities may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour.

⁴ The burden estimate in Table 1 applies solely to the 3 potential applicants, whereas the burden estimates in Tables 2 and 3 apply to currently registered DCOs.

2. Collection 3038-0076 – Event-Specific System Safeguards Reporting Requirements for Derivatives Clearing Organizations (Regulations 39.18(g) and (h))

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	2	32	0.1	3.2	\$26**

**Taking into account an hourly cost of \$132, which is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”). Commission staff arrived at this hourly rate using figures from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, in the category of Chief Compliance Officer.

3. Collection 3038-0076 – 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	50	800	\$5000***

***Taking into account an hourly cost of \$100. 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 the Commission rounded to \$100 per hour in estimating the cost burden of these recordkeeping requirements.