

SUPPORTING STATEMENT FOR REVISION OF
INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0024

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 Commodity Futures Trading Commission (“Commission”) is the independent federal regulatory agency charged with providing various forms of customer protection so that users of the commodity markets can be assured of the financial integrity of the markets and the intermediaries that they employ in their trading activities. Part 1 of the Commission’s regulations requires, among other things, that commodity brokers – known as futures commission merchants (“FCMs”) or introducing brokers (“IBs”) comply with minimum capital and segregation requirements. In order to monitor compliance with these financial standards, the Commission has required FCMs and IBs to file financial reports with the Commission and with the designated self-regulatory organization (“DSRO”) of which they are members as well as to report to the Commission should capital levels drop below prescribed minimums. (See Commission Rules 1.10, 1.12, 1.15, 1.16 and 1.17, 17 CFR 1.10, 1.12, 1.15, 1.16 and 1.17.)

In 2008, the US Congress passed the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, 2189-2204 (2008), also known as the Farm Bill. The Farm Bill provided the Commission with new authority with regard to the regulation of off-exchange retail forex transactions. Among other things, it directed the Commission to draft rules effectuating registration provisions for a new category of registrant – the retail foreign exchange dealer, or RFED. Under the terms of the legislation, RFEDs are subject to the same capital requirements as FCMs that are engaged in retail forex transactions, and, therefore, subject to the same reporting requirements. Accordingly, this collection was amended to reflect the financial reporting requirements of the new category of registrant, RFEDs.

In 2010, the US Congress passed the Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1376 (2010), giving the Commission the authority to regulate certain swap markets and participants in those markets. Section 731 of the Dodd-Frank Act, amended the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1 *et seq.*, to add, as section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers (“SDs”) and major swap participants (“MSPs”). In 2016, the Commission finalized the Margin Requirements for Uncleared Swaps for Swap

Dealers and Major Swap Participants rule to implement those requirements. Specifically, Regulation 23.154(b) require SDs and MSPs that do not have a prudential regulator (“CSEs”) that are using a model to compute initial margin requirements to submit the model for review and approval by the Commission or a registered futures association. CSEs must also notify the Commission upon making certain changes to the model. The information required for the prior written approval of the margin model or for certain changes to such model, is needed to demonstrate that the model satisfies all of the requirements of Regulation 23.154(b)

Finally, in 2013, the Commission finalized rules in an effort to prevent unauthorized usage of customer funds by FCMs and RFEDs. The final rules include modifications to the reporting requirements required by the Commission which resulted in changes to the financial statements filed by FCMs and RFEDs and made some of the recordkeeping requirements already contained in this OMB Collection Number 3038-0024 into reporting requirements. These rules added additional recordkeeping requirements by FCMs to assure the segregation of customer funds.

This collection, OMB Control No. 3038-0024, is needed for the Commission to continue its financial monitoring of its registrants. The burden hours are being revised to reflect the current number of registrants and updated to reflect more accurate numbers regarding the number of financial reports filed, based on current historical data.

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.

FCMs and RFEDs each file financial statements with the Commission and the DSROs of which they are members for the purpose of ensuring that filers are meeting their obligations as a Commission registrant. Additionally, the data being collected enhances the ability of the Commission and the DSROs to identify problematic financial matters in time to avoid market disruptions that often occur when an FCM or RFED may fail, particularly with respect to the tie-up of customer funds that may result. Finally, the rules require depository institutions that will hold customer funds for an FCM or RFED to acknowledge that the funds belong to the customers of the FCM or RFED, and not to the FCM or RFED itself.

The margin information submitted to the Commission by CSEs that wish to use models to compute initial margin requirements for uncleared swap transactions in lieu of standard table-based margin requirements, will be used by the Commission to evaluate whether a CSE’s initial margin model satisfies the regulatory standards and other requirements established by the regulations. The initial margin requirements for models are designed to ensure that CSEs collect sufficient amounts of collateral from their counterparties to protect them in the case of a possible default by their counterparty. The soundness and adequacy of margin models help ensure the safety and soundness of a CSE and the stability of the U.S. financial market.

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 procedures enable FCMs and RFEDs to comply with the filing requirements by submitting electronic filings to their DSRO, with copies provided to the Commission. The same is applicable for filing requirements for CSEs. Much of the information required is included as schedules to such electronic filings.

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.**

See responses to questions 1 and 2. With respect to FCMs that will operate as RFEDs, the rules do not impose wholly new obligations, but rather build upon the existing reporting and recordkeeping associated with minimum financial capital requirements that are already in effect so as to avoid duplicative or inconsistent collections of information. In terms of the acknowledgment letters required under these rules, a form has been developed by the Commission so that significant legal resources will not be needed to comply with the rules. A depository institution will only have to review the terms and execute the form once. FCMs and RFEDs will be required to keep the acknowledgments in their records. However, there are fewer than a score of depository institutions that provide custodial services to FCMs and RFEDs, so retention will impose minimal burden. With respect to the collections for CSEs, these entities previously have not been subject to Commission regulation, therefore, there is no similar information already available that could be used or modified for use for purposes described in item 1 above.

5. **If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), describe the methods used to minimize burden.**

Information required under the capital and margin rules do not affect any small business or small entities. FCMs and IBs are not small businesses or small entities and the CSEs that would be subject to the uncleared margin requirements under the Dodd-Frank Act rulemakings comprise only the largest global financial firms, as the statute contemplates. Accordingly, the collections of information in the rules will not involve any small business or small entity.

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.**

Without frequent reporting the Commission would be unable to adequately monitor FCM, IB and RFED compliance with financial standards or, as applicable, to provide timely customer protection to maintain the financial integrity of the intermediaries that they employ in their regulated trading activities and avoid market disruptions in the event of a pending firm failure. The Commission's review and approval of margin models for CSEs are necessary to ensure the soundness and adequacy of such margin models which help to ensure the safety and soundness of a CSE and the stability of the U.S. financial market.

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;**

See responses to questions 1, 2 and 6. Please note that the collections under this control number include various timeframes, including but not limited to, immediately following an identified event, daily, bi-weekly, monthly, and annually. For example, FCMs have both daily and monthly financial reporting obligations, annual certified financial and compliance report obligations, and periodic notice requirements.

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

The rules require daily reporting of the customer segregation schedule which is a primary tool in safeguarding of customer funds. Additional occasional reporting obligations may require response in fewer than 30 days. These occasional reporting obligations are limited to circumstances in which the financial or operating condition of the registrant may be in question.

- **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 document.

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

This question 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 question does not apply.

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

This question 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 agency has procedures to protect the information's confidentiality. These are set forth in 17 CFR Parts 145 and 147.

- **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 agency has procedures to protect the information's confidentiality. These are set forth in 17 CFR Parts 145 and 147.

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 soliciting public comments was published on April 9, 2019, 84 FR 14099. The Commission received no comments.

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.

This question does not apply.

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.

This question 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, regulation, 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.” Moreover, the Commission complies with the Freedom of Information Act regulations it has established, set forth at 17 CFR Part 145, and its Government in the Sunshine Act regulations, set forth at 17 CFR Part 147.

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 collection does 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:

- **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 OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burden 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, which adds the burden hours related to this collection. Total estimated aggregate burden hours are 80,837. Total estimated number of respondents are 1,294. Therefore, the total average burden hours estimate per respondent are approximately 62 ($80,837/1294 = 62.47$).

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 factor 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.**

In light of the current number of Commission-registered FCMs, RFEDs, IBs, and CSEs, the total number of respondents is estimated to be 1,294 and the aggregate hour burdens set forth below are based upon that expectation totaling 80,837 hours across both recordkeeping and reporting requirements. At an hourly rate of \$100 per hour (see below), the cost burden would be approximately \$6,247 per entity per year for a total of \$8,083,650.

The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$100 per hour. The Commission believes that this is an appropriate salary estimate for purposes of this regulation.

In support of this determination, the Commission notes that the salary estimate is based upon May 2017 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States¹, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities, Commodity Contracts, and Other Financial Investments and Related Activities Industry," which is \$94.20; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$97.82; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$43.27. The Commission also notes that, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that some respondents may be large financial institutions whose employees' salaries may exceed the mean wage. The Commission also observes that the Securities Industry and Financial Markets Association's Report on "Management & Professional Earnings in the Securities Industry – 2013" estimates the average wage of a compliance attorney or compliance staffer (including chief compliance officers and directors of compliance) in the

¹ See http://www.bls.gov/oes/current/oes_nat.htm

United States at only \$53.71 per hour. The Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the combined final regulations and that outside counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fulfill a requested assignment. While the Commission is uncertain about the billing rates that these respondents may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Any determination to use outside counsel, however, is at the discretion of the respondent.

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 costs for requesting and reviewing documents under the existing OMB Collection 3038-0024 and this amendment are the salaries and benefits for attorneys and auditors to analyze the information collected.

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

The burdens have been adjusted to reflect the Commission's estimate of the current number of affected respondents. Please note that the two Information Collections under this OMB control number have been combined in Appendix A.

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
Regulations and Forms Pertaining to Financial Integrity of the Market Place and Margin Requirements for Uncleared Swaps

1	2	3	4	5	6	7	8	9	10
Regulation(s) – Description (Applicable Registrant)	Estimated Number of Responden ts	Estimated Number of Reports by Each Responde nt	Estimate d Average Number of Burden Hours per Respon se	Annual Number of Burden Hours per Responde nt (3 x 4)	Estimated Average Burden Hour Cost	Total Average Hour Burden Cost Per Respondent (5 x 6)	Total Annual Responses (2 x 3)	Total Annual Number of Burden Hours (2 x 5)	Total Annual Burden Hour Cost of All Responses (2 x 7)
1.10 FINANCIAL REPORTING BY REGISTRANTS									
FCMs - Monthly	66	12	2.75	33	\$ 100.00	\$ 3,300.00	792	2178	\$ 217,800.00
IBs	1178	2	1	2	\$ 100.00	\$ 200.00	2356	2356	\$ 235,600.00
1.10 APPLICANTS FOR REGISTRATION AS FCMS AND IBS FILING FINANCIAL REPORTS	50	1	1	1	\$ 100.00	\$ 100.00	50	50	\$ 5,000.00

EXCHANGES									
FCM	10	3	0.5	1.5	\$ 100.00	\$ 150.00	30	15	\$ 1,500.00
IB	101	1	0.5	0.5	\$ 100.00	\$ 50.00	101	50.5	\$ 5,050.00
1.20(d) - FCM MUST FILE ACKNOWLEDGMENT THAT ACCOUNT CONTAINS CUSTOMER FUNDS	36	3	2	6	\$ 100.00	\$ 600.00	108	216	\$ 21,600.00
1.23(d) - FCM MUST FILE NOTICE OF WITHDRAWAL	9	10	1	10	\$ 100.00	\$ 977.78	88	88	\$ 8,800.00
1.32(d) - FCM MUST FILE DAILY STATEMENT OF SEGREGATION ON 1-FR ELECTRONICALLY	66	200	0.5	100	\$ 100.00	\$ 10,000.00	13200	6600	\$ 660,000.00
1.32(f); 1.32(g) - FCM MUST FILE TWICE MONTHLY SEGREGATED INVESTMENT DETAIL REPORT	66	24	2	48	\$ 100.00	\$ 4,800.00	1584	3168	\$ 316,800.00
1.55 - FCM MUST DEVELOP AND INCORPORATE NOTICE TO CUSTOMERS INTO OPENING ACCOUNT DOCUMENTS	66	1	20	20	\$ 100.00	\$ 2,000.00	66	1320	\$ 132,000.00
30.7(d) - FCM MUST FILE ACKNOWLEDGMENT THAT ACCOUNT	27	3	2	6	\$ 100.00	\$ 600.00	81	162	\$ 16,200.00

CONTAINS CUSTOMER SECURED FUNDS									
30.7(g) – FCM MUST FILE DAILY STATEMENT OF SECURED AMOUNTS ON 1-FR ELECTRONICALLY	9	15	0.5	7	\$ 100.00	\$ 733.33	132	66	\$ 6,600.00
30.7(m) – FCM MUST FILE DAILY STATEMENT OF SECURED AMOUNTS ON 1-FR ELECTRONICALLY	66	200	0.5	100	\$ 100.00	\$ 10,000.00	13200	6600	\$ 660,000.00
23.154 - MARGIN MODEL APPLICATION	2	1	240	240	\$ 100.00	\$ 24,000.00	2	480	\$ 48,000.00
SUBTOTAL REPORTING REQUIREMENTS							32,559	25,030	\$ 2,502,950
RECORDKEEPING									
-									
1.11(b); 1.11(c) – FCM TO ESTABLISH AND MAINTAIN WRITTEN POLICIES AND PROCEDURES RE: SAFEGUARDING CUSTOMER FUNDS	66	1	100	100	\$ 100.00	\$ 10,000.00	66	6600	\$ 660,000.00
1.14 - FCM TO MAINTAIN RECORDS RE: MATERIAL AFFILIATES	66	1	3	3	\$ 100.00	\$ 300.00	66	198	\$ 19,800.00
1.20(a) & (b) - FCM OPENING	36	3	0.75	2.25	\$	\$	108	81	\$

1.36(a) - RECORD OF SECURITIES RECEIVED FROM CUSTOMERS TO MARGIN ACCOUNTS	56	1	3	3	\$ 100.00	\$ 300.00	56	168	\$ 16,800.00
1.37 - RECORD OF CUSTOMERS' NAMES, ADDRESSES AND OCCUPATIONS; ACCOUNT CONTROLLERS OR GUARANTORS; AND RECORD OF OPEN LONG AND SHORT POSITIONS IN ACCOUNTS CARRIED FOR OTHER FCMS	1244	1	10	10	\$ 100.00	\$ 1,000.00	1244	12440	\$ 1,244,000.00
							0		
1.49 - DENOMINATION OF CUSTOMER FUNDS AND LOCATION OF DEPOSITORIES	72	200	1	200	\$ 100.00	\$ 20,000.00	14400	14400	\$ 1,440,000.00
							0		
1.65 - NOTICE OF ACCOUNT TRANSFERS	11	1	1	1	\$ 100.00	\$ 100.00	11	11	\$ 1,100.00
							0		
30.7(d) - FCM OPENING ACCOUNTS FOR DEPOSITING CUSTOMER FUNDS MUST MAINTAIN ACKNOWLEDGMENT THAT ACCOUNT CONTAINS CUSTOMER FUNDS	27	3	0.75	2.25	\$ 100.00	\$ 225.00	81	60.75	\$ 6,075.00
							0		
30.7(h) - FCM MUST KEEP A RECORD OF CUSTOMER FUNDS	27	200	0.5	100	\$ 100.00	\$ 10,000.00	5400	2700	\$ 270,000.00

INCLUDING DAILY VALUATION									
							0		
23.154 - MARGIN MODEL APPLICATION	50	1	10	10	\$ 100.00	\$ 1,000.00	50	500	\$ 50,000.00
SUBTOTAL RECORDKEEPING REQUIREMENTS							58,613	55,807	\$ 5,580,700
TOTAL AII REQUIREMENTS							91,172	80,837	\$ 8,083,650