

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

Clearing Member Risk Management

OMB CONTROL NUMBER 3038-0094

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 3(b) provides that one of the purposes of the Commodity Exchange Act (“CEA or Act”) is to ensure the financial integrity of all transactions subject to the Act and to avoid systemic risk. Section 8a(5) authorizes the Commission to promulgate such regulations that it believes are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. Risk management systems are critical to the avoidance of systemic risks. Section 4s(j)(2) requires each SD and MSP to have risk management systems adequate for managing its business. Section 4s(j)(4) requires each SD and MSP to have internal systems and procedures to perform any of the functions set forth in Section 4s.

Section 4d requires FCMs to register with the Commission. It further requires FCMs to segregate customer funds. Section 4f requires FCMs to maintain certain levels of capital. Section 4g establishes reporting and recordkeeping requirements for FCMs.

Pursuant to these provisions, the Commission adopted § 1.73 which applies to clearing members that are FCMs and § 23.609 which applies to clearing members that are SDs or MSPs. These provisions require these clearing members to have procedures to limit the financial risks they incur as a result of clearing trades and liquid resources to meet the obligations that arise.

The regulations require clearing member FCM, SDs, and MSPs to:

- (1) establish credit and market risk-based limits based on position size, order size, margin requirements, or similar factors;
- (2) use automated means to screen orders for compliance with the risk-based limits;
- (3) monitor for adherence to the risk-based limits intra-day and overnight;
- (4) conduct stress tests of all positions in the proprietary account and all positions in any customer account that could pose material risk to the futures commission merchant at least once per week;
- (5) evaluate its ability to meet initial margin requirements at least once per week;
- (6) evaluate its ability to meet variation margin requirements in cash at least once per week;
- (7) evaluate its ability to liquidate the positions it clears in an orderly manner, and estimate the cost of the liquidation at least once per month; and
- (8) test all lines of credit at least once per quarter.

Each of these items has been observed by Commission staff as an element of an existing sound risk management program at an SD, MSP, or FCM. The Commission regulations require each clearing member SD, MSP, and FCM to establish written procedures to comply with this regulation and to keep records documenting its compliance.

As discussed further below, the information collection burden arising from the regulations primarily is restricted to the costs associated with the affected registrants' obligation to maintain records related to clearing documentation between the customer and the customer's clearing member.

The information collection obligations imposed by the proposed regulations are necessary to implement certain provisions of the CEA, including ensuring that registrants exercise effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs.

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 regulations are an important part of the Commission's regulatory program for swap dealers, major swap participants, futures commission merchants, and derivatives clearing organizations. The information required to be preserved would be used by representatives of the Commission to ensure compliance with the CEA and applicable 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.

The regulations require that recordkeeping generally be performed in accordance with Commission regulation 1.31, which permits the use of electronic storage media.

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.

Swap dealers and major swap participants are new categories of registrants under the Dodd-Frank Act. Accordingly, the required information is not already collected by the Commission for any other purpose. Additionally, the required information is not already collected by the Commission for any other purpose with respect to futures commission merchants or derivatives clearing organizations. It also is not collected by any other agency or 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.

The collection of the required information does not involve any small businesses or 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.

Failure to maintain the records required by the proposed regulations would adversely affect the Commission's ability to ensure that swap dealers, major swap participants, futures commission merchants, and derivatives clearing organizations comply with their recordkeeping and documentation obligations under the CEA and Commission regulations and to ensure compliance with the mandatory clearing requirements of the CEA and Commission regulations. Failure to comply with the recordkeeping and requirements established by the proposed regulation would prohibit the Commission from ensuring that registrants exercise effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs.

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 question 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 question does not apply.

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

This question 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;**

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the CEA or by Commission regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the five-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States 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;**

This question does not apply. The proposed regulation does not require nor involve any statistical surveys.

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

This question does not apply. The proposed regulation does not require nor involve the 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**

This question does not apply. The proposed regulation does not require a 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.**

This question does not apply. In any event, the Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in Commission's regulations at part 145 and 147 of title 17 of the Code of Federal Regulations, 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.**

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).

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.

On November 14, 2018, the Commission published in the *Federal Register* notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 83 FR 57828 ("60-Day Notice"). The Commission

did not receive any relevant comments. Accordingly, it did not alter the burden estimates set forth in the 60-Day Notice.

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

This question does not apply. No decision to provide any payment or gift to respondents has been made.

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 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. The proposed regulations do not request nor require the provision 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 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. The annual burden associated with these regulations is estimated to be 504 hours, at an annual cost of \$23,184 for each clearing member FCM, SD, and MSP. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency.

Regulations 1.73 and 23.609 require each clearing member FCM, SD, and MSP to ensure compliance with these regulations. Maintenance of contracts is prudent business practice and the Commission understands that SDs and MSPs already maintain some form of this documentation. Additionally, the Commission understands that much of the existing customer clearing documentation already complies with these rules, and therefore that compliance will require a minimal burden.

In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2013 by the Securities Industry and Financial Markets Association (2013 Report). For the cost calculations, as noted below, Commission staff used a composite (blended) wage rate by averaging the mean annual salaries of a Compliance Manager and a Programmer as published in the 2013 Report, and divided that figure by 1800 annual working hours to arrive at the hourly wage rate of \$46.

Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information. It is important to note that although the hourly wage referenced above does take bonuses into account, it does not consider certain variables such as employee benefits which can increase the cost of labor.

Accordingly, the estimated hour burden was calculated as follows:

Developing and Conducting Position Risk Management Procedures for clearing member SDs, MSPs, and FCMs. This hourly burden arises from the requirement that clearing member SDs, MSPs, and FCMs establish and perform testing of clearing member risk management procedures.

Number of registrants: 166

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 252 [252 trading days]

Estimated aggregate number of annual responses: 41,832 [166 registrants x 252 trading days]

Estimated annual hour burden per registrant: 504 hours [252 trading days x 2 hours per record]

Estimated aggregate annual hour burden: 83,664 burden hours [166 registrants x 504 hours per registrant]

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 response to question 12 and Attachment A. The information collection required by the regulations does not involve any capital or start-up capital or operations or maintenance costs as the Commission understands that clearing member swap dealers, major swap participants, and futures commission merchants already maintain sufficient compliance personnel and systems for the regulatory reporting and recordkeeping that would be required.

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 proposed regulations would 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 program changes or adjustments are necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act, which established a new regulatory scheme. The revisions reflect a reduction in the number of SDs and MSPs registered with the Commission.

- 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

Clearing Member Risk Management

OMB Collection File 3038-0094

Number of Registrants: 166

Frequency of Recordkeeping/Reporting: *See table below (daily, annually, or as needed)*

Estimated Average Burden Hours Per Registrant: 504

Estimated Aggregate Burden Hours: 83,664

Estimated Annual Cost Per Registrant: \$23,184

Estimated Aggregate Annual Cost: \$ 3,848,544

% of Responses Collected Electronically: 100%

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Annual Hour Burden Per Registrant	Estimated Aggregate Hour Burden	Estimated Annual Cost Per Registrant	Estimated Aggregate Annual Cost
Recordkeeping: Developing and Conducting Position Risk Management Procedures for SDs, MSPs, and FCMs	166	As needed	252	41,832	2	504 hours	83,664 hours	\$23,184	\$3,848,544