SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Core Principles and Other Requirements for Designated Contract Markets

OMB CONTROL NUMBER 3038-0052

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 regulations governing designated contract markets ("**DCMs**") originally were adopted pursuant to the Commodity Futures Modernization Act of 2000, which amended section 5 of the Commodity Exchange Act ("**CEA**") to impose requirements concerning the registration and operation of DCMs.[1] The DCM statutory framework subsequently was revised as a result of further amendments to the CEA under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank Act**").[2] Part 38 of the Commission's regulations governs the activities of DCMs. The information collected pursuant to part 38 is necessary for the Commission to evaluate whether entities operating as, or applying to become, DCMs comply with the part 38 and other Commission requirements and the CEA's statutory requirements.

Collection 3038-0052 was created in response to the part 38 regulatory requirements for DCMs. In general, OMB Control Number 3038-0052 covers all information collections in part 38, including Subpart A and the DCM core principles (*i.e.*, Subparts B through X) as well as the related appendices thereto (*i.e.*, Appendix A—Form DCM; Appendix B—Guidance on, and Acceptable Practices in, Compliance with Core Principles; and Appendix C—Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation). This OMB control number, 3038-0052, also includes collections under Rule 1.52 regarding the Enhanced Protections Afforded Customer and Customer Funds Held by Futures Clearing Merchants and Derivatives Clearing Organizations. Regulation

[1] 7 U.S.C. 1 *et seq.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, tit. VII, 124 Stat. 1376 (2010) (codified as amended in various sections of 7 U.S.C.), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf.

1.52 of the Commission's regulations imposes information collection burdens on DCMs. As such, the Commission amended certain portions of Regulation 1.52 to reduce the scope of the third-party examinations expert's review and permit a longer period of minimum engagement of the examinations expert by certain DCMs. These amendments reduce slightly the current burden hour estimate from 50 hours per respondent on an annual basis to 49 hours.

Additionally, the Commission notes that the number of registered, active DCMs has decreased from 15 to 14.[3] The reduction in the number of registered DCMs, which the Commission notes is unrelated to the amendments that are the cause of this notice here, will reduce the total information collection burdens for OMB control number 3038-0052 as noted in Attachment A.

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 Commission will continue to use all information previously collected under OMB Control Number 3038-0052 as previously justified, and will use the new information proposed to be collected to enhance the ability of the Commission and the designated self-regulatory organization to identify problematic financial matters in time to avoid market disruptions when an FCM may fail, particularly with respect to the tie-up of customer funds that may result.

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.

All required submissions by DCMs to the Commission may be submitted electronically. Records required to be kept may similarly be maintained electronically.

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[3] The Commission notes that previous submissions to OMB have referred to "registered" or "designated" DCMs. The Commission notes that the terms "registered" and "designated" are used interchangeably and mean the same thing. Further, as used in this supporting statement, the Commission's reference to "registered" or "designated" DCMs refer to active DCMs rather than to "dormant" DCMs. The Commission notes that as a legal matter, an active DCM may become dormant through inactivity – and therefore would not be subject to any substantive compliance or related PRA information collection obligations – although the dormant DCM would still be legally deemed to be a "registered/designated" DCM.

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.

Information collected under this OMB Control Number is not already collected by the Commission for any other purpose, nor is it collected by any other agency, nor is the information available from 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.

The required information collected under this OMB Control Number will not affect any small business or small entities. The Commission notes that it has previously established certain definitions of ‘‘small entities’’ to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the Regulatory Flexibility Act and determined that DCMs are not small entities for purposes of the Regulatory Flexibility Act.[4]

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.

This question is not applicable.

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 current rules require respondents to report the disciplinary and access denial information to the National Futures Association (“**NFA**”) within 30 days of the adverse action.

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

[4] Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

In order for the Commission to adequately perform its statutory responsibility to determine whether DCMs, and applicants to become DCMs, are in compliance with the applicable core principles and implementing regulations, a request for information may require the collection and presentation of information in fewer than 30 days depending on the exigency of the situation.

- **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 of documents.

- **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 and Core Principle 18 (Recordkeeping) require 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;**

The collection does not involve a statistical survey.

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

The collection does not involve the use of any statistical data.

- **that includes a pledge of confidentiality that is not supported by authority established in statue 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 collection does not involve any 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.**

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 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.

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 noted in the 2018 NPRM, the Commission and staff engaged in various discussions with DSROs on the administration and development of the existing examination program. Many of these discussions centered on the reporting obligations imposed as part of this collection. In addition, the Commission received additional public comments as part of the Commission's formal "Project KISS" initiative to apply the Commission's rules "in ways that are simpler, less burdensome and less of a drag on the American economy."[5] The Commission also published a notice in the *Federal Register* soliciting comments on this collection (XX Fed. Reg. XXXX, , 2019). The Commission received no relevant comments.

- **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.**

[5] CFTC Requests Public Input on Simplifying Rules, CFTC Release No. 7555-17 (May 3, 2017), *available at* https://www.cftc.gov/PressRoom/PressReleases/pr7555-17.

No such circumstances are anticipated.

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

The question is not applicable.

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 CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, 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.

The final rules covered by this collection do 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 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 our 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 for more detailed discussion.

Please note that the current OMB Control Number includes a preapproved information collection request based off a proposed rulemaking which has not been finalized, related to parts 9, 36, 37, 38, 39, and 43 of the Commission's regulations (the "**2018 NPRM**").[6] Therefore, the current inventory of the total time burden for this collection is 7,358, based on the currently active information collection request ("ICR") and not the 8,895 as estimated in that prior proposal.[7] Further, there are three Information Collection's (ICs) that fall within OMB Control No. 3038-0052. The changes in the Final rules adopted herein only pertain to IC: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations and relate only to amendments to Regulation 1.52. Further and as noted below in Appendix A, the annual burden hour estimate is only being reduced by 1 burden hour per respondent from 50 to 49. Additionally, unrelated to the 2018 NPRM, the

[6] Swap Execution Facilities and Trade Execution Requirement Proposed Rule (83 Fed. Reg. 61946, Nov. 30, 2018). As noted in that supporting statement, the Commission notes that the majority of the changes in that NPRM affect swap execution facilities ("**SEFs**") under corresponding OMB control number 3038-0074.[7] While the 2018 NPRM would mostly affect SEFs with corresponding OMB control number 3038-0074, upon the 2018 NPRM becoming a final rule, the Commission would eliminate the MAT process in §38.12 for DCMs under OMB control number 3038-0099 and create a new MAT process related to DCMs in revised part 36 of the Commission's regulations.

[7] The total burden hours for the current active information collection request, ICR Reference No. 201804-3038-006, is 7,358.

number of registered DCMs has decreased from 15 to 14, which will also decrease the total aggregate burden hours across all registered DCMs from 7,357.5 burden hours[8] to 6,853 burden hours.[9]

13. Provide an estimate of the total annual cost burden to respondents or record-keepers 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.**

[8] 490.5 current burden hours x 15 DCMs = 7,357.5 total burden hours across all DCMs.

[9] 489.5 revised burden hours x 14 DCMs = 6,853 total burden hours across all DCMs.

It is expected that DCMs will utilize existing software, information technology, and systems. Thus, the Commission believes that there will not be additional capital/startup costs or operational/maintenance costs incurred by DCMs to report the information required by the final rule.

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 final rule will 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 Commission amended certain portions of Regulation 1.52 to reduce the scope of the third-party examinations expert's review and permit a longer period of minimum engagement of the examinations expert by certain DCMs. These amendments reduce slightly the current burden hour estimate from 50 hours per respondent on an annual basis to 49 hours. Changes in the Final rules adopted herein only pertain to IC: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations and relate only to amendments to Regulation 1.52. Additionally, unrelated to the 2018 NPRM, the number of registered DCMs has decreased from 15 to 14, which will also decrease the total aggregate burden hours across all registered DCMs from 7,357.5 burden hours to 6,853 burden hours.

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

Collection 3038-0052

Part 38 Establishing Procedures for
Designated Contract Markets and Applicants Seeking Designation

General Assumptions and Methodology

Scope and Applicability of Information Collections

As discussed in the response to question 1 and 12 above, OMB Control Number 3038-0052 covers all information collections in part 38 of the Commission's regulations, including Subpart A of part 38 and the DCM core principles (*i.e.*, Subparts B through X) as well as the related appendices thereto (*i.e.*, Appendix A—Form DCM, Appendix B—Guidance on, and Acceptable Practices in Compliance with Core Principles, and Appendix C—Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation). There are three Information Collection's (ICs) that fall within OMB Control No. 3038-0052. The changes in the Final rules adopted herein only pertain to IC: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations and relate only to amendments to Regulation 1.52. As noted below in Appendix A, the annual burden hour estimate for this IC is being reduced by 1 burden hour per respondent from 50 to 49. Additionally, unrelated to the 2018 NPRM, the number of registered DCMs has decreased from 15 to 14. While not reflected in Attachment A below, the number of respondents for the other 2 ICs under OMB Control No. 3038-0052 have been reduced from 15 to 14, which will decrease the total aggregate burden hours across all registered DCMs from 7,357.5 burden hours to 6,853 burden hours.[10]

Average Burden Hour Cost

The Commission calculates the average burden hour cost based on a blended hourly rate of $59 (rounded up) that consists of ¼ Financial Specialist's wage, ¼ Lawyer's wage, ¼ Paralegal's wage, and ¼ Accountant's wage provided by the Department of Labor's Bureau of Labor Statistics, *available at* https://www.bls.gov/oes/current/naics4_523000.htm.

[10] 489.5 revised burden hours x 14 DCMs = 6,853 total burden hours across all DCMs.

Estimated Number of Respondents

1. Registered DCMs: The Commission notes that the number of registered DCMs has decreased from 15 to 14, although the Commission notes that this reduction is unrelated to the changes in this final rulemaking. Accordingly, this reduction has been noted in the tables below as applicable. For the avoidance of doubt, as used here the term "registered DCM" refers to non-dormant registered DCMs. The Commission notes that dormant DCMs have ceased operations, including compliance with related information collection obligations, but are technically still deemed to be "registered" under the Commission's regulations.[11]

Baseline for Burden Hour Estimates

Amended Burden: Registered DCMs

Recordkeeping Burden Hours and Costs Related to amendments to Regulation 1.52.;IC: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Responses by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
§ 1.52 (Examination Program and Audit of Program)	**14**	**1**	**49**	**49**	**$59**	**$2,891**	**14**	**686**	**$40,474**

[11] For clarity, the Commission is excluding all "dormant" DCMs from the number of respondents since dormant DCMs, while technically registered, are inactive and not required to comply with any of the Commission's substantive obligations or related information collections.