

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

**OMB CONTROL NUMBER 3038-0076**

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 requirements in Part 39 of its regulations, which include general requirements applicable to DCOs (Subpart A), requirements for compliance with core principles (Subpart B), and provisions applicable to systemically important DCOs and DCOs that elect to be subject to these provisions (Subpart C). The Commission is adopting amendments to Part 39 to clarify the meaning of certain provisions, simplify processes, and codify existing relief, which will affect the existing collections of information. The Commission also is adopting a few new requirements with respect to default procedures and event-specific reporting.

In addition, in conjunction with assessing the impact on information collection requirements as a result of these changes, the Commission is also consolidating four collections of information relating to requirements under Part 39 of its regulations,<sup>1</sup> which will be combined in OMB control number 3038-0076. The Commission also is renaming the collection under OMB control number 3038-0076 as “Requirements for Derivatives Clearing Organizations.”

*Subpart A - General Requirements Applicable to DCOs*

Subpart A establishes the procedures and information required for applications for registration as a DCO, including submission of a completed Form DCO as provided in Appendix A to Part 39, accompanied by all applicable exhibits. The current burden estimate reflects three applicants for DCO registration annually and 400 hours to complete and submit the form, including all exhibits. The Commission is reducing the number of potential applicants for DCO registration to two annually, based on recent numbers of applications filed. The Commission is modifying and updating Form DCO to conform it to the revisions to Part 39.

Additionally, the Commission is applying certain governance requirements applicable to systemically important DCOs (“SIDCOs”) and DCOs that have elected to be subject to Subpart

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<sup>1</sup> The four collections are: OMB Control No. 3038-0066, Financial Resources Requirements for Derivatives Clearing Organizations; OMB Control No. 3038-0081, General Regulations and Derivatives Clearing Organizations; OMB Control No. 3038-0069, Information Management Requirements for Derivatives Clearing Organizations; and OMB Control No. 3038-0076, Risk Management Requirements for Derivatives Clearing Organizations.

C of Part 39 (“Subpart C DCOs”) to all DCOs. This necessitates moving the corresponding burden hours from the Subpart C Election Form to Form DCO. Specifically, 22 burden hours per respondent for the Subpart C Election Form - Exhibits A through G, currently under OMB control number 3038-0081, are being transferred to the Form DCO burden per respondent in OMB control number 3038-0076.

The Commission is eliminating the requirement for DCOs to use Form DCO to request an amended order of DCO registration. The Commission estimates the burden hours per respondent would decrease by one hour due to the change to § 39.3(a)(2) that will no longer require a DCO seeking to amend its order of registration to submit Form DCO. Taking into account all of the amendments related to Form DCO, the Commission estimates one report per respondent at an average of 421 burden hours per report, or aggregate burden hours of 842.

The Commission also is amending provisions of Regulation 39.3 regarding extension of the application review, vacation of DCO registration, and transfer of positions. The Commission is adopting new § 39.3(a)(6), which would permit the Commission to extend the 180-day review period for DCO applications specified in § 39.3(a)(1) for any period of time to which the applicant agrees in writing. Although this is not a new practice, it was not previously accounted for separately in this information collection. The Commission is estimating that there would be two requests for extension of the DCO application per year, one per respondent, and that it will take one hour per report.

The Commission is amending § 39.3(e) to codify statutory requirements regarding vacation of registration. The changes specify information that a DCO must include in its request to vacate, and require a DCO to continue to maintain its books and records after its registration has been vacated for the requisite statutory and regulatory retention periods. The Commission estimates that there would be one request to vacate every three years and that it would take three hours per report.

The Commission is transferring the 100 recordkeeping burden hours currently contained in OMB control number 3038-0069 to OMB control number 3038-0076. In addition, for recordkeeping by a DCO that has requested to vacate its registration, the Commission is adding this recordkeeping burden to OMB control number 3038-0076, which currently includes 16 responses and 50 burden hours for the recordkeeping requirement of registered DCOs. The burden for the request to vacate requirement has been divided to reflect the estimate of one record of the request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years.

The Commission previously has proposed new Regulation 39.6 to codify existing procedures for exemptions from registration as a DCO.<sup>2</sup> Subsequent to that proposal, the Commission issued a supplemental proposal<sup>3</sup> and requested a separate information collection under a new control number to include the information collection requirements associated with both the prior and supplemental proposals. The Commission has also submitted proposed

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<sup>2</sup> 83 FR 39923 (Aug. 13, 2018).

<sup>3</sup> 84 FR 35456 (July 23, 2019).

changes under Control No. 3038-0076 related to a proposal regarding alternative compliance for non-U.S. DCOs that has not yet been finalized.<sup>4</sup>

### *Subpart B - Requirements for Compliance with Core Principles*

#### a. Chief Compliance Officer (CCO) Annual Reporting Requirements

Regulation 39.10(c)(3) requires the CCO of a DCO to prepare, and to submit to the Commission and the DCO's board of directors, an annual report containing specified information regarding the DCO's compliance with the core principles and Commission regulations. The burden for CCO annual reports, which is currently covered by OMB control number 3038-0081, is being moved to OMB control number 3038-0076. OMB control number 3038-0081 reflects that there are 12 respondents that submit CCO annual reports annually and that it takes 80 hours to complete and submit the report, and 960 hours in the aggregate. The number of respondents is being updated to 16 to reflect the current number of registered DCOs. The Commission is adopting a change to allow a DCO to incorporate by reference certain sections of prior annual compliance reports. Specifically, if the sections of the CCO annual report that describe the DCO's compliance policies and procedures have not materially changed, the current report may reference a prior year's report, provided that the referenced report was filed within the prior five years. The Commission estimates that this change should decrease the burden of preparing the CCO annual report by ten hours per respondent, and 160 hours in aggregate, by not requiring the report to repeat potentially lengthy descriptions of policies and procedures that have already been adequately described in a CCO annual report previously submitted to the Commission.

The Commission is adopting a requirement that the CCO annual report must identify, by name, rule number, or other identifier, the policies and procedures intended to comply with each core principle and applicable regulation. The Commission estimates this change would add two hours to the burden of preparing each report, and 32 hours in the aggregate. Lastly, the Commission is amending Regulation 39.10(c)(4) to require that the CCO annual report describe the process by which the report is submitted to the DCO's board or senior officer, and include a cover letter or notice documenting the date of submission. The Commission anticipates an increase of one hour in the burden for each report, and 16 hours in the aggregate due to this change. Overall, the Commission estimates that the net impact of these increases and reductions to the CCO annual report burden due to the changes is expected to be a decrease of seven hours per respondent in the existing information collection burden associated with the CCO annual report.<sup>5</sup>

#### b. Annual and Quarterly Financial Resources Reporting

Regulation 39.11(f) requires DCOs to provide to the Commission quarterly reports of their financial resources, and § 39.19(c)(3) requires DCOs to prepare and submit audited annual

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<sup>4</sup> 84 FR 34819 (July 19, 2019).

<sup>5</sup> The existing burden estimate for the CCO annual report is 80 hours per response. For the new estimate, the Commission is subtracting ten hours for the amendment that will not require restatement of information that has not changed from the prior report, adding two hours for the requirement to include references to rules and policies, and one hour for the requirement that the report include documentation of the process of providing the report to the board, for a net burden per respondent of 73 hours. The recordkeeping burden is not affected by these changes.

financial statements. The Commission is adding § 39.11(f)(2), which incorporates in § 39.11 the annual reporting requirement that currently exists in § 39.19(c)(3). This change simply moves the existing requirement to a different location, and does not alter the existing information collection burden associated with this requirement. Accordingly, the burden for annual financial reports is being moved from OMB control number 3038-0069 to OMB control number 3038-0076, and the burden for quarterly financial reports is being moved from OMB control number 3038-0066 to OMB control number 3038-0076. The Commission is cancelling OMB control numbers 3038-0069 and 3038-0066.

The Commission is requiring in § 39.11(f)(2) that, concurrently with filing the required annual financial report, a DCO also provide: (1) a reconciliation, including appropriate explanations, of its balance sheet in the certified annual financial statements with the DCO's most recent quarterly report when material differences exist or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the required statements not misleading. The Commission estimates that the change would add an additional 20 hours per report, and 320 hours in the aggregate, to the current burden of 2606 hours per respondent, and 41,696 hours, in OMB control number 3038-0069, which as noted above, is being moved to OMB control number 3038-0076.

Finally, the Commission determined not to adopt proposed changes to § 39.11(f)(2)(i) which would have required that the annual report identify the DCO's own capital allocated to the DCO's compliance with § 39.11(a)(1), and also identify each of the DCO's financial resources allocated to the DCO's compliance with § 39.11(a)(2). The Commission previously estimated that the proposed change would have added 14 hours per report and 224 hours in the aggregate; these amounts have been subtracted from the burden estimates for DCO annual financial reports.

The Commission estimates that the aggregate result of these changes will be to increase the information collection burden associated with annual financial reports from 2606 hours to 2626 hours for each DCO, or an aggregate of 42,016 burden hours for all 16 registered DCOs.

The Commission is removing from § 39.11(f)(3) the requirement that certain documentation be filed quarterly; instead, DCOs would only need to include the information in their first quarterly report submission and upon any subsequent change, for an expected reduction of three hours per report. § 39.11(f)(1)(v) would have required a DCO to identify in its quarterly report the financial resources allocated to meeting its obligations under § 39.11(a)(1) and (a)(2), which was expected to increase the burden by one hour per report. The Commission has determined not to adopt this change and has reduced the burden hour estimate by one hour per report. The Commission has adjusted the existing burden hours for quarterly reporting to reflect these changes, which result in an overall reduction in burden of one hour per report from the total estimated burden of eight hours per report reflected in the Supporting Statement for the Proposal.

### c. Daily Reporting

The Commission is amending § 39.19(c)(1)(i)(A) – (C), which requires a DCO to report margin, cash flow, and position information by house origin and separately by customer origin,

to report this information by individual customer account as well. The Commission is also amending § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day position information, DCOs must report the risk sensitivities and valuation data that the DCO generates, creates, or calculates in connection with managing the risks associated with such positions. The burden associated with these changes is anticipated to result in an increase from 0.1 to 0.5 hours per report, and 2000 in the aggregate. The burden increase for daily financial reports is being moved from OMB control number 3038-0069 to OMB control number 3038-0076.

Separately, the Commission is adopting changes to § 39.19(c)(1)(i) that codify relief previously granted to fully-collateralized DCOs that will reduce their daily reporting burden by not requiring information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. The change will reduce the burden for fully-collateralized DCOs but would not affect the burden for the majority of DCOs that are subject to daily reporting requirements.

The Commission is amending § 39.13(g)(8)(i)(B) to require a DCO to have rules requiring its clearing members to report customer information about futures (as well as swaps) to DCOs. This is a new information requirement that is being added to OMB control number 3038-0076. The burden applicable to clearing members is estimated to apply to 64 respondents, with 250 annual reports per respondent, 0.2 hours per report, and a gross annual burden of 3200 hours.

#### d. Event-specific Reporting

Regulations 39.18(g) and (h) require a DCO to provide notice regarding certain exceptional events or planned changes related to a DCO's automated systems. These notice requirements are incorporated by reference in § 39.19(c)(4). Regulation 39.19(c)(4) also requires a DCO to notify the Commission of the occurrence of other specified events; for example, a decrease in financial resources or the default of a clearing member. The information collection burden associated with these notices required under § 39.19(c)(4) is currently addressed by OMB Control No. 3038-0069, but is being moved to OMB control number 3038-0076 and consolidated with the burden in OMB control number 3038-0076 that is currently associated with § 39.18(g) and (h). In addition, the Commission is adding to § 39.19(c)(4) several events for which DCOs will be required to provide notification if such events occur.

The Commission is also amending § 39.16(c)(2)(ii) to require that a DCO provide public notice of a declaration of default on its website. The estimated burden of § 39.16(c)(2)(ii) is included in the estimate for event-specific reporting because it would be linked to the requirement under § 39.19(c)(4)(vii) that a DCO provide notice to the Commission regarding the default of a clearing member.

The burden associated with these changes pursuant to § 39.19(c)(4) is anticipated to result in an increase in the number of reports by DCO per year on average, from four to 14, and a reduction in the hour burden per response, which was previously overstated, from six to 0.5 hours, because a DCO is required to provide a brief notice with only the pertinent details of the incident.

e. Public Information

The Commission is revising § 39.21 to clarify that information regarding the financial resource package available in the event of a clearing member default, which a DCO is required to post on its website pursuant to § 39.21, should be updated at least quarterly, consistent with the requirement in § 39.11(f)(1)(i)(A) to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission is also clarifying that other information specified in § 39.21 must be disclosed separately on the DCO's website, and not provided solely in the DCO's posted rulebook. This is a new information collection that is not covered by an existing OMB control number. The changes are estimated to add an average of two hours per response, and eight hours per respondent annually (4 quarterly reports x 2 hours per report) to OMB control number 3038-0076.

f. Governance

As noted above, the Commission is incorporating governance provisions from Subpart C, which only applies to a limited subset of DCOs, into Subpart B, which is applicable to all DCOs. Therefore, the information collection burden currently associated with the governance standards of § 39.32, which results from required disclosure of major board decisions and governance arrangements, has been reallocated to § 39.24. The burden associated with Subpart C governance provisions, which is currently covered by OMB control number 3038-0081, is being moved to OMB control number 3038-0076. The aggregate burden of these requirements would increase because they will be applicable to all registered DCOs. The new aggregate burden estimate for § 39.24 that is associated with the required ongoing disclosure of major board decisions and governance arrangements by registered DCOs, including DCOs that are not currently subject to Subpart C, is estimated to apply to 16 respondents, with six reports per respondent and an average of three hours per report.

g. Legal Risk

Changes to § 39.27 will require a DCO that provides clearing services outside the United States to ensure that the legal opinion that a DCO must obtain to provide those services is accurate and up to date. The new subsection also requires the DCO to submit an updated legal memorandum to the Commission following all material changes to the analysis or content contained in the memorandum. This requirement would apply only to DCOs offering clearing services outside the U.S. This is a new information collection that is not covered by an existing OMB control number. The Commission expects that circumstances necessitating submission of an updated legal memorandum will occur infrequently, not more than once every three years.

*Subpart C - Provisions Applicable to SIDCOs and DCOs That Elect to Be Subject to the Provisions of Subpart C*

Because the Commission is removing and reserving § 39.32 and Exhibit B of the Subpart C Election Form and moving the governance requirements to Form DCO and § 39.24, the corresponding information collection burden under § 39.32, currently covered by OMB control number 3038-0081 will be eliminated and the burden under the Subpart C Election Form will be

reduced. Further, in consolidating the burden for Subpart C, currently in OMB control number 3038-0081, with OMB control number 3038-0076, the Commission has reassessed the burden for the Subpart C Election Form, and is adjusting certain burden hour estimates and numbers of respondents. Specifically, the Commission is reducing the number of burden hours estimated for the certification portion of the Subpart C Election Form from 25 hours to 2 hours, because the prior estimate overstated the burden necessary to prepare the one-page certification. The burden that is currently estimated separately for the certifications, exhibits, and supplements/amendments to the Subpart C Election Form have been combined because a DCO must provide all the required information in order to submit a complete Subpart C Election Form.<sup>6</sup>

Additionally, the Commission is updating the estimated numbers of respondents for Subpart C to reflect the current number of SIDCOs and subpart C DCOs, and a reduction, from five to one, in the anticipated number of DCOs newly electing to be subject to Subpart C. The Commission is also updating the number of responses for the rescission notices that must be provided to clearing members based on an average of the current number of clearing members at Subpart C DCOs. The Commission also is combining burden estimates that previously were estimated separately for SIDCOs only and for all Subpart C DCOs; that distinction was made in the initial implementation of Subpart C but is no longer necessary since the Subpart C rules have been in place for several years.

The Commission is adding to § 39.37 a notification requirement regarding changes to the PFMI disclosure framework for SIDCOs and Subpart C DCOs, which is expected to increase, by one hour, the existing information collection burden of 80 hours per response.

Because the Commission is moving all of the burden estimates for Subpart C from OMB control number 3038-0081 to OMB control number 3038-0076 and cancelling information collection 3038-0081, the existing burden estimates for §§ 39.33, 39.36, 39.38 and 39.39, and certain disclosures under § 39.37, as updated to reflect the current number of SIDCOs and Subpart C DCOs, are restated in Attachment A. In addition, for the quantitative disclosures required under § 39.37, which may be updated as frequently as quarterly, the Commission has updated the number of reports per respondent from one to four annually, and has distributed the existing 35 burden hours among the four reports ( $35/4=8.75$ , rounded to 9).

With respect to the Subpart C recordkeeping burden that the Commission is moving from OMB control number 3038-0081 to OMB control number 3038-0076, the Commission also has combined the burden estimates for financial and liquidity resources, and liquidity resource due diligence and testing because these requirements apply to the same set of respondents. As noted above, the general recordkeeping requirements that were previously estimated separately for SIDCOs and all Subpart C DCOs also have been combined.

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<sup>6</sup> The current burden for the Subpart C Election Form exhibits is 155 hours per response; 22 of these hours are being moved to the Form DCO burden as discussed in the Form DCO section above, leaving 133 hours. Also, the Commission is reducing the burden currently attributed to amendments to the Subpart C Election Form and consolidating it with the burden for supplemental information because in practice, DCOs have not frequently filed amendments. Consolidating the certification (2 hours), exhibits (133 hours), and supplemental or amended information (45 hours) results in a burden of 180 hours.

**2. Indicate, by whom, and for what purpose the information 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 to determine whether applicants meet the necessary criteria for registration as a DCO or Subpart C status. Review of this information also 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 practices or lack of compliance with the CEA.

**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;**



The collection requires daily reporting of margin information. This frequency is necessary for the Commission to conduct effective risk surveillance. For risk monitoring purposes of DCOs, daily reporting is necessary because positions can change on a daily basis. Event-specific reporting may or may not be more often than quarterly, depending on when events requiring notice occur.

- **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.**

**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 proposed amendments were published in the Federal Register at 84 FR 22226 (May 16, 2019). Thus, members of the public, including respondents, have been provided an opportunity to comment on the rule and related matters, including issues concerning recordkeeping and other paperwork burdens. The Commission did not receive any comments on the information collection.

**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 be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

This question does not apply. None of the required information is sensitive, as that term is used in Question 11.

**12. Provide estimates of the hour burden of the collection of information. The Statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A.

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition,**

**expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.**

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The Commission does not expect that the changes to Part 39 will result in capital and start-up or operation and maintenance costs.

**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.**

#### *Subpart A*

For Subpart A of Part 39, 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, based on the average salaries for staff who conduct the reviews (attorneys and analysts), the annual cost to the government is approximately \$216,000. The changes to Part 39 are not expected to affect this estimate.

#### *Subpart B*

##### a. CCO Annual Report

The cost to the government of reviewing CCO annual reports is based on an estimate of staff reviewing one report from each of the 16 registered DCOs for 8 hours per report. At an estimated average salary cost of \$ 90 per hour, based on the average salaries for staff who conduct the reviews (attorneys and analysts) the annual cost to the government is approximately \$720 per respondent, and \$11,520 for all respondents.

b. Daily, Annual and Event-specific Reporting

The estimate of the annual cost to the government per respondent is about \$7980 per year. This reflects the cost of staff needed to analyze the information received, as follows: a full time equivalent reviewing for 7 hours per trading day, and an additional 70 hours per year reviewing other required reports at an average salary of \$70 per hour. The total number of hours of review time per respondent each year is 114 hours, and the total annual cost for all 16 registered DCOs is \$127,680. The estimate of the cost to the government per respondent for new event-specific reporting requirements is negligible.

c. Quarterly Reporting

The estimated annual cost of this information collection to the government per respondent is \$561, and \$8,976 for all respondents. This reflects the cost of staff (at an average compensation of \$70 per hour)<sup>7</sup> needed to analyze each report submitted by a respondent (a total of 4 reports per year) for two hours per report (a total of 8 hours of review time per year per respondent).

The Commission does not anticipate that the clarifications to Part 39 will result in a measurable additional cost to the federal government.

*Subpart C*

The primary cost to the federal government will be the salaries and benefits for staff to process the Subpart C Election Forms received; periodically review reports, disclosures, and records for compliance with the CEA and regulations; and perform risk analyses with respect to a SIDCO or Subpart C DCO based upon the various safeguards contained in the regulations. It is anticipated that these costs will translate into 4 Commission employees, who will spend approximately 10% of their time performing these tasks. At an estimated combined salary and benefit cost of \$75 per hour per employee, the costs to the government will be approximately \$62,400.

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

As discussed above, this collection consolidates existing collections that include requirements under the Commission's Part 39 regulations. In this process, Commission staff has updated the existing burden estimates to reflect current assumptions and costs. Further, the amendments to modify, add, or remove various Part 39 requirements are expected to result in adjustments to the burden applicable to certain of these requirements; in some cases, the burden will increase slightly, and in other cases, the burden will be reduced.

**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**

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<sup>7</sup> The estimated average staff compensation was derived from the current base and locality pay structure tables applicable to Commission employees. It was calculated using the average compensation for employees at the relevant staff level in the applicable Commission office.

**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**

**Requirements for Derivatives Clearing Organizations**

**OMB Collection File 3038-0076**

The burden associated with rules implementing requirements for DCOs, and for applicants for DCO registration, is estimated as follows:

**A. Subpart A – General Provisions Applicable to DCOs**

	1	2	3	4	5	6	7	8	9
Requirement	Est. No. of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours Per Response	Est. Annual No. of Burden Hours Per Respondent (2x4)	Est. Avg. Burden Hour Cost <sup>8</sup>	Est. Avg. Burden Cost Per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
<b>Reporting</b>									
Form DCO and Exhibits – 39.3(a) (2)	2	1	2	421	421	\$250	\$105,250	842	\$210,500
Agreement in writing to extend application review period-39.3(a)(6)	2	1	2	1	1	\$250	\$250	2	\$500
Request to Vacate DCO Registration-39.3(e)(1) <sup>9</sup>	1	0.33	0.33	3	1	\$250	\$250	1	\$250

<sup>8</sup> 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.

<sup>9</sup> Estimate is based on one request every three years.

## B. Subpart B – Compliance With Core Principles

Requirement	1	2	3	4	5	6	7	8	9
Reporting	Est. No. of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours Per Response	Est. Annual No. of Burden Hours Per Respondent (2x4)	Est. Avg. Burden Hour Cost	Est. Avg. Burden Cost Per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
CCO Annual Report-39.10	16	1	16	73	73	\$96 <sup>10</sup>	\$7,008	1168	\$112,128
Annual audited financial statements-39.19(c)(3)	16	1	16	2626	2626	\$196 <sup>11</sup>	\$514,696	42,016	\$8,235,136
Quarterly Reporting-39.19(c)(2)	16	4	64	7	28	\$57 <sup>12</sup>	\$1,596	448	\$25,536
Daily reporting-39.19(c)(1)	16	250	4000	0.5	125	\$46 <sup>13</sup>	\$5,750	2,000	\$92,000
Event-specific reporting-39.19(c)(4) <sup>14</sup>	16	14	224	.5	7	\$76	\$532	112	\$8,512
Public information- § 39.21	16	4	64	2	8	\$46 <sup>15</sup>	\$368	128	\$5,888
Governance disclosure –§ 39.24	16	6	96	3	18	\$76 <sup>16</sup>	\$1,368	288	\$21,888

<sup>10</sup> This dollar estimate uses \$96, the Bureau of Labor Statistics mean hourly rate for category 23-1011, Lawyers, as of May 2018.

<sup>11</sup> This dollar amount takes into account an hourly cost of \$196, which represents the median per hour audit costs in the 2015 Audit Fee Report prepared by the Financial Executives Research Foundation, <http://www.financialexecutives.org/ferf/download/2015%20Final/2015-018.pdf>. The burden hours per response are consistent with the median audit hours in the FERF report.

<sup>12</sup> This dollar estimate uses \$57, the Bureau of Labor Statistics mean hourly rate for category 13-0000, Business and Financial Operations, as of May 2018.

<sup>13</sup> The dollar estimate uses \$46, the Bureau of Labor Statistics mean hourly rate for category 13-2099, Financial Specialist, as of May 2018.

<sup>14</sup> The estimated number of reports per respondent may increase due to the addition of several events for which notice will be required. In addition, the requirement in § 39.16(c)(2)(ii) that a DCO provide public notice of a declaration of default on its website is covered by this estimate because it is related to the requirement under § 39.19(c)(4)(vii) that a DCO provide immediate notice to the Commission regarding the default of a clearing member. The hour burden cost is estimated at \$76 based on a weighted average of 60% of the Bureau of Labor Statistics mean hourly wage as of May 2018 of \$96.26 for 23-1011, Lawyers, and 40% of the mean hourly wage of \$45.73 for 13-2099, Financial Specialists.

<sup>15</sup> The dollar estimate uses \$46, the Bureau of Labor Statistics mean hourly rate for category 13-2099, Financial Specialist, as of May 2018.

<sup>16</sup> The hour burden cost is estimated at \$76 based on a weighted average of 60% of the Bureau of Labor Statistics mean hourly wage as of May 2018 of \$96.26 for 23-1011, Lawyers, and 40% of the mean hourly wage of \$45.73 for 13-2099, Financial Specialists.



Requirement	1	2	3	4	5	6	7	8	9
<b>Reporting</b>	<b>Est. No. of Respondents</b>	<b>Est. Annual Reports per Respondent</b>	<b>Est. Total Annual Responses (1x2)</b>	<b>Est. Avg. No. of Hours Per Response</b>	<b>Est. Annual No. of Burden Hours Per Respondent (2x4)</b>	<b>Est. Avg. Burden Hour Cost</b>	<b>Est. Avg. Burden Cost Per Respondent (5x6)</b>	<b>Est. Total Annual Burden Hours (3x4)</b>	<b>Total Est. Annual Burden Cost of All Responses (1x7)</b>
Legal risk considerations—§ 39.27	1	.33	.33	20	6.6	\$250 <sup>17</sup>	\$1,650	6.6	\$1,650
<b>Third-party Reporting</b>									
DCO rules re: clearing member reporting of customer information on futures-39.13(g) (8)(i)(B)	64 <sup>18</sup>	250	16,000	0.2	50	\$46 <sup>19</sup>	\$2,300	3,200	\$147,200

C. Subpart C – Provisions Applicable to SIDCOs and DCOs That Elect to be Subject to Subpart C

	1	2	3	4	5	6	7	8	9
	<b>Est. No. of Respondents</b>	<b>Est. Annual Reports per Respondent</b>	<b>Est. Total Annual Responses (1x2)</b>	<b>Est. Avg. No. of Hours per Response</b>	<b>Est. Annual No. of Burden Hours per Respondent (2x4)</b>	<b>Est. Avg. Burden Hour Cost</b>	<b>Est. Avg. Burden Cost per Respondent (5x6)</b>	<b>Est. Total Annual Burden Hours (3x4)</b>	<b>Total Est. Annual Burden Cost of All Responses (1x7)</b>
<b>Reporting-Subpart C Election – 39.31</b>									
Subpart C Election Form <sup>20</sup>	1	1	1	180	180	\$250	\$45,000	180	\$45,000
Withdrawal Notices-	1	1	1	2	2	\$250	\$500	2	\$500
Rescission Notices	1	16	16	3	48	\$250	\$12,000	48	\$12,000
PFMI disclosures	1	1	1	200	200	\$250	\$50,000	200	\$50,000
Quantitative disclosures	1	1	1	80	80	\$250	\$20,000	80	\$20,000

<sup>17</sup> Taking into account an average salary of \$75-400 per hour, the calculation uses \$250. In the Commission's experience, DCOs often hire outside counsel to prepare materials responsive to Regulation 39.27.

<sup>18</sup> Number of respondents is estimated conservatively based on the number of registered FCMs as of September 30, 2019.

<sup>19</sup> The dollar estimate uses \$46, the Bureau of Labor Statistics mean hourly rate for category 13-2099, Financial Specialist, as of May 2018.

<sup>20</sup> Burden hours per response consolidate the components of the Subpart C Election Form. The hour burden estimate for the Subpart C Election Form is the same as for Form DCO (see FN 7).

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours per Response	Est. Annual No. of Burden Hours per Respondent (2x4)	Est. Avg. Burden Hour Cost	Est. Avg. Burden Cost per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
<b>Reporting - Subpart C Compliance<sup>21</sup></b>									
Financial and Liquidity Resource Documentation-39.33	9	1	9	120	120	\$76	\$9,120	1080	\$82,080
Stress Test Results-39.36	9	16	144	14	224	\$76	\$17,024	2016	\$153,216
Disclosure Framework Requirements-39.37	9	1	9	81	81	\$76	\$6,156	729	\$55,404
Quantitative Information Disclosures-39.37	9	4	36	9	36	\$76	\$2,736	324	\$24,624
Transaction, Segregation, Portability Disclosures-39.37	9	1	9	35	35	\$76	\$2,660	315	\$23,940
Efficiency and Effectiveness Review-39.38	9	1	9	3	3	\$76	\$228	27	\$2,052
Recovery and Wind-Down Plan-39.39	9	1	9	480	480	\$76	\$36,480	4320	\$328,320

#### D. Recordkeeping Requirements

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours per Response	Est. Annual No. of Burden Hours per Respondent (2x4)	Est. Avg. Burden Hour Cost <sup>22</sup>	Est. Avg. Burden Cost per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
<b>§ 39.20 - Recordkeeping</b>									
DCO	16	1	16	150	150	\$100	\$15,000	2401 <sup>23</sup>	\$240,100

<sup>21</sup> The hour burden cost is estimated at \$76 based on a weighted average of 60% of the Bureau of Labor Statistics mean hourly wage as of May 2018 of \$96.26 for 23-1011, Lawyers, and 40% of the mean hourly wage of \$45.73 for 13-2099, Financial Specialists.

<sup>22</sup> According to recent Bureau of Labor Statistics data (May 2018), 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 \$100.56, which the Commission rounded to \$100 per hour in estimating the cost burden of these recordkeeping requirements.

Recordkeeping – Part 39, Subparts A and B									
Subpart C - Generally	9	110	990	10	1100	\$100	\$110,000	9900	\$990,000
Subpart C - Financial and Liquidity Resources, Liquidity Resource Due Diligence and Testing	9	8	72	10	80	\$100	\$8,000	720	\$72,000

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<sup>23</sup> The total annual recordkeeping burden estimate reflects the combined figures for 16 registered DCOs with an annual burden of one response and 150 hours per response (16 x 1 x 150=2400), and one vacated DCO registration every three years with an annual burden of one hour. The aggregate hour burden cost also has been increased by \$100 to account for the additional hour for a vacated DCO.