

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

**Response to Notification of Termination of Exemptive Relief Issued
Pursuant to Regulation 30.10**

OMB CONTROL NUMBER 3038-0116

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 4(b)(2) of the Commodity Exchange Act (“CEA”) provides that the Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers’ funds, and registration with the Commission by any person located in the United States, its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions.

Accordingly, the Commission adopted regulation 30.10. Commission regulation 30.10 provides a process by which persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements under Part 30 of the Commission’s regulations.

On March 3, 2020, the Commission approved regulation 30.10 to codify the process by which the Commission may terminate such exemptive relief after appropriate notice and opportunity to respond. Specifically, new regulation 30.10(c)(3) provides any party affected by the Commission’s determination to terminate relief with the opportunity to respond to the notification in writing no later than 30 business days following the receipt of the notification, or at such time as the Commission permits in writing. The Commission believes that the information collection obligations imposed by amendments to regulation 30.10 are essential to the ongoing evaluation of the effectiveness of its program for regulatory deference.

- 2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The information to be collected will be used by Commission staff to evaluate whether exemptive relief issued pursuant to regulation 30.10 remains warranted.

- 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 amended regulation does not mandate the collection of information by any particular automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

- 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, 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, describe the methods used to minimize burden.**

The Commission certified that the final rules do not have a significant economic impact on a substantial number of 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.**

The amended regulation provides an opportunity to respond to a notice of termination of a § 30.10 exemption and does not impose any ongoing reporting requirements. Thus, the subject collection may not be conducted less frequently than required.

Failure to respond to a notice of termination would demonstrate that a foreign regulatory regime no longer satisfies the standards underlying a prior

determination by the Commission to defer to foreign laws and regulations with respect to customers located in the United States engaging in foreign futures and options.

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. The amended regulation does not impose reporting requirements.

- **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;**

This question does not apply. The amended regulation does not impose recordkeeping requirements.

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

This question does not apply. The amended regulation neither requires nor involves 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 amended 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. The amended regulation does not require respondents to submit proprietary trade secrets, or other confidential information. In any event, the Commission has promulgated regulations to protect the confidentiality of the information collected from respondents. They are set forth in 17 CFR Part 145.

- 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).

In the proposing Federal Register release, the Commission sought public comment on any aspect of the proposed collection of information. 84 Fed. Reg. 32105, 32107 (July 5, 2019). The Commission did not receive any such 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 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. No such decision was 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 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 a respondent’s data. These are set forth in the Commission’s regulations at part 145 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 amended regulation neither requests nor requires 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.**

- **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.

As delineated below, the hour burden per respondent associated with the proposed regulation is estimated to be 8 hours, at an annual cost of \$800. This burden would result from providing a written response to the notice of termination issued by the Commission pursuant to amendments to regulation 30.10(a). The burden relates solely to reporting requirements; the regulation does not contain any recordkeeping requirements.

The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$100.00 per hour. The Commission believes that this is an appropriate salary estimate for purposes of this regulation.

In support of this determination, the Commission notes that the salary estimate is based upon May 2017 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States¹, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities, Commodity Contracts, and Other Financial Investments and Related Activities Industry," which is \$94.20; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$97.82; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$43.27. The Commission also notes that, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that some respondents may be large financial institutions whose employees' salaries may exceed the mean wage. The Commission also observes that the Securities Industry and Financial Markets Association's Report on "Management & Professional Earnings in the Securities Industry - 2013" estimates the average wage of a compliance attorney or compliance staffer (including chief compliance officers and directors of compliance) in the United States at only \$53.71 per hour. The Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the combined final regulations and that outside counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fulfill a requested assignment. While the Commission is uncertain about the billing rates that these respondents may

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

pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Any determination to use outside counsel, however, is at the discretion of the respondent.

Reporting Related to Response to Notice of Termination.

Number of respondents: 1

Average number of annual responses by each respondent: 1

Estimated average hours per response: 8

Frequency of collection: As needed

Aggregate annual burden: [1] respondents x 1 response x 8 hours = burden hours

Based upon the above, the aggregate burden hours and cost for all respondents is 8 burden hours and \$800 [1 burden hour x \$100 per hour].

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 information collection required by the amended regulations would not involve any capital or start-up capital, operations or 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.**

The proposed regulation does not impose any additional costs to the Federal Government. As part of its regulatory oversight, Commission staff already is monitoring on an ongoing basis changes to foreign laws and regulations, market developments and information-sharing arrangements.

- 15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14.**

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- 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. The Commission amended regulation 30.10 to codify the process by which the Commission may terminate such exemptive relief after appropriate notice and opportunity to respond. The final rule creates a new collection of information.

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, "Certification for Paperwork Reduction Act Submissions."

This question does not apply.

Attachment A

Part 30 – Response to Notification of Termination of Exemptive Relief Issued Pursuant to Regulation 30.10

OMB Collection File 3038-XXXX

Number of Respondents	1	
Estimated Average Burden Hours Per Respondent	8	
Estimated Annual Cost Per Respondent	\$800	
Estimated Aggregate Burden Hours	8	
Estimated Aggregate Cost	\$800	