

# SUPPORTING STATEMENT FOR A REVISED INFORMATION COLLECTION

## Bankruptcy Regulations; Notice of Proposed Rulemaking

OMB CONTROL NUMBER 3038-0021<sup>1</sup>

### Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Commodity Futures Trading Commission (“CFTC” or “Commission”) is proposing to amend its bankruptcy regulations for commodity broker liquidations, 17 CFR Part 190 (“Part 190”). The proposed amendments to Part 190 are meant to update comprehensively part 190 to reflect current market practices and lessons learned from past commodity broker bankruptcies. Proposed part 190 would, like current Part 190, apply to liquidations under Chapter 7, Subchapter IV of the Bankruptcy Code, 11 U.S.C. §§ 761 *et seq.* The CFTC promulgated Part 190 pursuant to the authority of 7 U.S.C. § 24.

The revisions to Part 190 would also amend the information collections in Part 190. The collection of information in proposed Part 190 would, like those in current Part 190, involve the reporting, recordkeeping, and third party disclosure requirements relating to a commodity broker liquidation.

The information collection requirements of proposed Part 190 are necessary and will be used to facilitate the effective, efficient, and fair conduct of liquidation proceedings for

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<sup>1</sup> There are two information collections now associated with OMB Control No. 3038-0021. The first includes the reporting, recordkeeping, and third party disclosure requirements applicable to a single respondent in a commodity broker liquidation (*e.g.*, a single commodity broker or a single trustee) within the relevant time period provided for in Commission regulations 190.02(a)(1), 190.02(a)(2), 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), 190.02(c), 190.03(a)(1), 190.03(a)(2), 190.04(b) and 190.06(b). The second information collection includes the third party disclosure requirements provided for in Commission regulations 190.06(d) and 190.10(c) which are applicable on a regular basis to multiple respondents (*i.e.*, multiple futures commission merchants).

commodity brokers and to protect the interests of customers in these proceedings both directly and by facilitating the participation of the CFTC in such proceedings. The information collection requirements in proposed Part 190 can be summarized as follows:

**Information collection requirements applicable to commodity brokers that are futures commission merchants.**

Proposed § 190.03(b)(1) is derived from current § 190.02(a)(1). It would require FCMs that file a petition in bankruptcy to notify the Commission and the relevant DSRO, as soon as practicable before, and in any event no later than, the time of such filing, of the anticipated or actual filing date, the court in which the proceeding will be or has been filed and, as soon as known, the docket number assigned to that proceeding. It would further require an FCM against which an involuntary bankruptcy petition or application for a protective decree under SIPA is filed to notify the Commission and the relevant DSRO immediately upon the filing of such petition or application.

Proposed § 190.03(b)(2) is derived from current § 190.02(a)(2). It would require the trustee, the relevant DSRO, or an applicable clearing organization to notify the Commission if such person intends to transfer or apply to transfer open commodity contracts or customer property on behalf of the public customers of the debtor.

Proposed § 190.03(c)(1) is derived from current § 190.02(b)(1). It would require the trustee to use all reasonable efforts to promptly notify any customer whose futures account, foreign futures account, or cleared swaps account includes specifically identifiable property, and that such specifically identifiable property may be liquidated on and after the seventh day after the order for relief if the customer has not instructed the trustee in writing before the deadline

specified in the notice to return such property pursuant to the terms for distribution of customer property contained in proposed part 190.

Proposed § 190.03(c)(2) is derived from existing § 190.02(b)(2). It would allow the trustee to treat open commodity contracts of public customers identified on the books and records of the debtor has held in an account designated as a hedging account as specifically identifiable property of such customer.<sup>2</sup>

Proposed § 190.03(c)(4) is derived from current 190.02(b)(4). It would require the trustee to promptly notify each customer that an order for relief has been entered and instruct each customer to file a proof of customer claim containing the information specified in proposed § 190.03(e).

Proposed § 190.05(b) is derived from current § 190.04(b). It would require the trustee to use reasonable efforts to compute a funded balance for each customer account that contains open commodity contracts or other property as of the close of business each business day subsequent to the order for relief until the date all open commodity contracts and other property in such account has been transferred or liquidated.

Proposed § 190.05(d) is new. It would require the trustee to use reasonable efforts to continue to issue account statements with respect to any customer for whose account open commodity contracts or other property is held that has not been liquidated or transferred.

Proposed § 190.07(b)(5) is derived from current § 190.02(c). It would, in the event that specifically identifiable property has been or will be transferred, require the trustee to transmit any customer instructions previously received by the trustee with respect to such specifically identifiable property to the transferee of such property.

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<sup>2</sup> The Commission no longer assigns burden hours to the discretionary notice that a trustee may provide to customers in an involuntary FCM bankruptcy proceeding pursuant to proposed § 190.03(c)(3). There have been no involuntary FCM liquidations and none are anticipated. Accordingly, continuing to assign burden hours to this voluntary requirement would inappropriately inflate the burden hours of this information collection.

Proposed § 190.10(b) is derived from current § 190.06(d). It would require an FCM to provide an opportunity to each of its customers, upon first opening a futures account or cleared swaps account with such FCM, to designate such account as a hedging account.

Proposed § 190.10(e) is derived from current § 190.10(c). It would require an FCM to provide any customer with the disclosure statement set forth in proposed § 190.10(e) prior to accepting property other than cash from or for the account of a customer to margin, guarantee, or secure a commodity contract.

**Information collection requirements applicable to commodity brokers that are derivatives clearing organizations.**

New proposed Subpart C to Part 190 provides a bespoke set of rules applicable in the unprecedented and highly unlikely case that a derivatives clearing organization becomes a debtor under the bankruptcy code. Derivatives clearing organizations are important financial market infrastructures, and thus, in the context of a bankruptcy, it is essential for the trustee and for the Commission to obtain information about the infrastructure and the situation with the utmost promptness.

Many of the information collection requirements set forth below are derived from the analogous information collection requirements applicable to FCMs.

Proposed § 190.12(a)(2) is analogous to proposed §190.03(b)(1). It would require a clearing organization that files a petition in bankruptcy to notify the Commission, at or before the time of such filing, of the filing date, the court in which the proceeding will be or has been filed and, as soon as known, the docket number assigned to that proceeding. It further would require

clearing organization against which an involuntary bankruptcy petition is filed to similarly notify the Commission within three hours after the receipt of notice of such filing.

Proposed § 190.12(b)(1) would require the debtor clearing organization to provide to the trustee, no later than three hours following the later of the commencement of a bankruptcy proceeding or the appointment of the trustee, copies of each of the most recent reports that the debtor was required to file with the Commission under § 39.19(c).

Proposed § 190.12(b)(2) would require the debtor clearing organization to provide to the trustee and the Commission, no later than three hours following the commencement of a bankruptcy proceeding, copies of (1) the most recent recovery or wind-down plans of the debtor maintained pursuant to § 39.39(b) and (2) the most recent version of the debtor's default management plan and default rules and procedures maintained pursuant to § 39.16 and, as applicable, § 39.35.

Proposed §§ 190.12(c)(1) and (c)(2) would require the debtor clearing organization to make available to the trustee and the Commission, no later than the next business day following commencement of a bankruptcy proceeding, copies of (1) all records maintained by the debtor pursuant to § 39.20(a), and (2) any opinions of counsel or other legal memoranda provided to the debtor in the five years preceding the bankruptcy proceeding relating to the enforceability of the rules and procedures of the debtor in the event of an insolvency proceeding involving the debtor.

Proposed § 190.14(a) would allow the trustee, in their discretion based upon the facts and circumstances of the case, to instruct each customer to file a proof of claim containing such information as is deemed appropriate by the trustee, and to seek a court order establishing a bar date for the filing of such proofs of claim.

Proposed § 190.14(d) is analogous to proposed § 190.05(b). It would require the trustee to use reasonable efforts to compute a funded balance for each customer account that contains open commodity contracts or other property as of the close of business each business day subsequent to the order for relief on which liquidation of property within the account has been completed or immediately prior to any distribution of property within the account.

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.**

Proposed §§ 190.03(b)(1), 190.12(a)(2): The requirement to notify the CFTC of the filing of a petition in bankruptcy will enable and has enabled the CFTC to participate in the proceedings and to act for the protection of customers and the market and for compliance with applicable law.

Proposed § 190.03(b)(2): The required disclosure will advise and has advised the CFTC of planned transfers of customer positions in commodity broker liquidations so that the CFTC can evaluate and determine whether to disapprove the transfer under 11 U.S.C. § 764(b) and 17 CFR § 190.06.

Proposed § 190.03(c)(1): The required notice will help to alert and has helped to alert customers of a commodity broker that is in a liquidation proceeding that their specifically identifiable property will be liquidated unless the customer provides appropriate written instructions concerning such property to the Trustee.

Proposed § 190.03(c)(2): The required notice will help and has helped to alert customers of a commodity broker that is in a liquidation proceeding of the need to provide the Trustee with

instructions regarding the transfer or liquidation of their specifically identifiable open commodity contracts.

Proposed § 190.03(c)(4): The required notification will alert and has alerted customers of a commodity broker in a liquidation proceeding of the need to file a claim to recover part or all of the value of customer property held by the commodity broker.

Proposed § 190.05(d): This new requirement for customer account statements will facilitate the ability of customers of the bankrupt FCM with open commodity contracts or property to keep track of such open commodity contracts or property even during insolvency, and will promptly make them aware of the specifics of the liquidation or transfer of such contracts or property.

Proposed § 190.07(b)(5): This requirement will assist and has assisted in making available to brokers to whom open commodity contracts in a commodity broker liquidation have been transferred instructions that customers have previously provided to the Trustee regarding the customers' contracts. The new brokers will then be able to act on the customers' instructions.

Proposed §§ 190.05(b), 190.14(d): The calculations required by these regulations will be used and have been used by the Trustee to manage accounts pending liquidation, to facilitate transfers of accounts, and to form part of the basis for determining the amount to be paid on customer claims.

Proposed § 190.10(b): The required notice will enable and has enabled the customers of FCMs that undertake hedging contracts to specify in advance whether the customer prefers that open hedging contracts held in a hedging contract be liquidated in the event that the FCM files, at some later point in time, for bankruptcy in commodity broker liquidation proceeding.

Proposed § 190.10(e): The required disclosure will provide and has provided customers of commodity brokers who post property to serve as margin for commodity trading accounts with information about the legal rules governing how their property will be treated in the event that the broker becomes involved in a commodity broker liquidation proceeding.

Proposed §§ 190.12(b)(1, 2), (c)(1, 2): These new required disclosures will facilitate (a) the trustee's ability to understand the business of the clearing as soon as practicable, and within hours, (b) bringing the Commission's understanding of the specifics of that business up-to-date, and (c) inform both the trustee and the commission better concerning the enforceability in bankruptcy of the clearing organization's rules and procedures.

Proposed § 190.14(a): This new requirement would provide the trustee broad discretion in designing the proof of claim form and specifying the information that will be required. This broad discretion appears to be appropriate, given the bespoke nature of a clearing organization bankruptcy.

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.**

Proposed §§ 190.03(a)(1) (for FCMs) and 190.12(a)(1)(i) (for DCOs) provide that, unless instructed otherwise by the Commission, all mandatory or discretionary notices to be given to the Commission under Part 190 must be sent electronically to the Commission. Proposed §§ 190.03(a)(2) and 190.12(a)(1)(ii) provide that

“the trustee, after consultation with the Commission, and unless otherwise instructed by the Commission, will establish and follow procedures reasonably designed for giving adequate notice to [customers/members] ... and for receiving claims or other notices from [customers/members]. Such procedures should include, absent good cause otherwise, the use of a prominent website as well as communication to [customers/members] electronic addresses that are available in the debtor's books and records.”



All of the recordkeeping requirements contained in proposed part 190 involve procedures that can, and ordinarily would, be performed using electronic systems. Similarly, the communications between a trustee and customers, or between a trustee and brokers to whom commodity contracts have been transferred would be expected to occur electronically. It is likely that the automated systems established by the relevant FCM or DCO can be leveraged to effectuate such recordkeeping and communications.

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.**

This information collection generally involves reporting, recordkeeping, and third party disclosure requirements in the unique circumstance of a commodity broker bankruptcy and, therefore, does not duplicate other collections of information.

Regulations 190.10(b) and 190.10(e) involve disclosure notices to customers of FCMs (most of who also have the legal status of commodity brokers for purposes of Part 190) generally and are not confined to brokers in liquidation proceedings. The Commission previously amended its risk disclosure rules in order to consolidate disclosure statements and eliminate the requirement that customers provide a signed statement acknowledging receipt of the bankruptcy statement, thereby reducing duplicative disclosure requirements and easing administrative burdens on FCMs. (See 58 FR17495 (Apr. 5, 1993) and 59 FR 34376 (July 5, 1994)). The rules streamlined disclosure burdens by eliminating the requirement that FCMs provide the mandated disclosure statements to categories of customers whose financial sophistication and knowledge would render the information contained in these statements duplicative. (See 63 FR 8566 (Feb. 20, 1998)).

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

The collection of information does not involve small entities.

6. **Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technological or legal obstacles to reducing burden.**

Most of the information collection provisions of Part 190 involve a single notice to customers or to regulators upon the occurrence of a commodity broker liquidation or of certain events within the context of a commodity broker liquidation or involve a single notice to customers of FCMs / members of DCOs. As a result, the frequency cannot be reduced without losing the benefit of the notice. The frequency of the recordkeeping requirements contained in proposed § 190.05(b) is necessary for the information to be meaningful in the fast-moving context of commodity markets where accounts are adjusted daily both by law and as a matter of business practice.

7. **Explain any special circumstances that require the collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**

This question does not apply.

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

In cases where the respondent is required to provide information more promptly, the expediency is necessary to enable the CFTC and customers to address a fast moving situation.

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

This question does not apply.

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

Commission regulation 1.31 generally requires that books and records required to be kept by the Commodity Exchange Act (CEA) or by Commission regulations be retained for certain specified periods. In most cases, such period is not less than five years.

With respect to this particular information collection, the Commission notes that the instructions obtained by FCMs concerning the treatment of customer property in the event of commodity broker liquidation must be retained for more than three years in order to be available if the firm becomes involved in a commodity broker liquidation more than three years after the instructions are obtained from the customer.

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

This question does not apply.

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

This question does not apply.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

This question does not apply.

- **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 relevant regulations do not involve the submission of proprietary trade secrets or, with one exception, other confidential information to the Commission. Obtaining, per proposed § 190.12(c)(2), information regarding enforceability of a bankrupt DCO's rules and procedures in the event of insolvency is necessary to ensure that the trustee and the Commission are aware

of, and enable them to determine how to address, any problems revealed thereby. The Commission notes that it has procedures to protect the confidentiality of information submitted to it. 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.**

In the proposing Federal Register release, the Commission seeks public comment on any aspect of the proposed collection of information.

**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.**

**[To be addressed at final rule stage]**

- 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.**

This question does not apply. The Commission does not provide respondents with an assurance of confidentiality except as follows: 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 business transactions or market positions of any person and trade secrets and names of customers.” The Commission has procedures to protect the confidentiality of data. These are set forth in the Commissions’ regulations at part 145 through part 147 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 relevant regulations do not request nor require the provision of sensitive information, as that term is used in Item 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 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 set forth in Attachment A, the annual respondent burden for this information collection during the renewal period is estimated to be as follows:<sup>3</sup>

Reporting requirements in an FCM bankruptcy :<sup>4</sup>

Estimated Number of respondents: 1

Estimated Annual Number of Responses per Respondent: 1<sup>5</sup>

Estimated Total Annual Number of Responses for All Respondents: 1

Estimated Annual Number of Burden Hours Per Respondent: 1<sup>6</sup>

Estimated Total Annual Burden Hours for All Respondents: 1

Total Estimated Annual Burden Cost of All Responses: \$127.24

Type of Respondents: Futures commission merchant commodity brokers who have filed a petition in bankruptcy, Trustees.

Frequency of Collection: On occasion

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<sup>3</sup> Because a commodity broker liquidation for a futures commission merchant is estimated to occur only once every three years, this notice expresses such burdens for futures commission merchants in terms of those that would be imposed on one respondent during the three year period. Similarly, because a commodity broker liquidation for a derivatives clearing organization is estimated to occur only once every fifty years, this notice expresses such burdens for derivatives clearing organizations in terms of those that would be imposed on one respondent during the fifty year period.

<sup>4</sup>The reporting requirements are contained in proposed §§ 190.03(b)(1) and 190.03(b)(2).

<sup>5</sup> The Commission estimates that (1) under proposed § 190.03(b)(1), an FCM would make two notifications per bankruptcy (one to the Commission and one to its DSRO), and (2) under proposed § 190.03(b)(2), an FCM would make one notification per bankruptcy. Dividing those numbers by three (since the Commission anticipates an FCM bankruptcy occurring once every three years) results in 0.67 notifications annually pursuant to proposed § 190.03(b)(1), and 0.33 notifications annually pursuant to proposed § 190.03(b)(2), for a total of one notification annually per respondent.

<sup>6</sup> The Commission estimates that (1) the notifications required under proposed § 190.03(b)(1) would take 0.5 hours to make, and (2) the notification required under proposed § 190.03(b)(2) would take 2 hours to make. In terms of burden hours, this amounts to (0.5\*0.67 under proposed § 190.03(b)(1)) plus (2\*0.33 under proposed § 190.03(b)(2)), or a total of one burden hour annually per respondent.

Recordkeeping requirements in an FCM bankruptcy:<sup>7</sup>

Estimated Number of Respondents: 1

Estimated Annual Number of Responses per Respondent: 26,666.67<sup>8</sup>

Estimated Total Annual Number of Responses: 26,666.67

Estimated Annual Number of Burden Hours per Respondent: 266.67<sup>9</sup>

Estimated Total Annual Burden Hours: 266.67

Total Estimated Annual Burden Cost of All Responses: \$33,930.66

Type of Respondents: Trustees

Frequency of Collection: Only during the pendency of an FCM bankruptcy: daily and on occasion

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<sup>7</sup> The recordkeeping requirements are contained in proposed §§ 190.05(b) and 190.05(d).

<sup>8</sup> The Commission estimates that (1) under proposed § 190.05(b), a trustee would compute a funded balance for customer accounts 40,000 times; and (2) under proposed § 190.05(d), a trustee would issue 40,000 account statements for customer accounts. Dividing those numbers by three (since the Commission anticipates an FCM bankruptcy occurring once every three years) results in 13,333.33 records annually pursuant to proposed § 190.05(b), and 13,333.33 records annually pursuant to proposed § 190.05(d), for a total of 26,666.67 records annually per respondent.

<sup>9</sup> The Commission estimates that the each record required under proposed §§ 190.05(b) and 190.05(d) would take 0.01 hours to prepare. In terms of burden hours, this amounts to (0.01\*13,333.33 under proposed § 190.05(b)) plus (0.01\*13,333.33 under proposed § 190.05(d)), or a total of 266.67 burden hours annually per respondent.

Third Party Disclosures Applicable to a Single Respondent during an FCM bankruptcy:<sup>10</sup>

Estimated Number of Respondents: 1

Estimated Annual Number of Responses per Respondent: 10,003.32<sup>11</sup>

Estimated Total Annual Number of Responses: 10,003.32

Estimated Average Number of Burden Hours per Respondent: 1,336.66<sup>12</sup>

Estimated Total Annual Burden Hours: 1,336.66

Total Estimated Annual Burden Cost of All Responses: \$170,076.87

Type of Respondents: Trustees

Frequency of Collection: On occasion

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<sup>10</sup> These third party disclosure requirements are contained in proposed §§ 190.03(c)(1), 190.03(c)(2), 190.03(c)(4), and 190.07(b)(5).

<sup>11</sup> The Commission estimates that a trustee would make the required disclosures under each of proposed §§ 190.03(c)(1), 190.03(c)(2) and 190.03(c)(4) 10,000 times per bankruptcy. Dividing those numbers by three (since the Commission anticipates an FCM bankruptcy occurring once every three years) results in 3,333.33 disclosures annually pursuant to each of proposed §§ 190.03(c)(1), 190.03(c)(2), and 190.03(c)(4). The Commission further estimates that a trustee would make the required disclosure under proposed § 190.07(b)(5) 10 times per bankruptcy. Dividing this number by three results in 3.33 disclosures annually pursuant to proposed § 190.07(b)(5). This amounts to a total of 10,003.32 disclosures annually per respondent.

<sup>12</sup> The Commission estimates that (1) each disclosure required under proposed §§ 190.03(c)(1) and 190.03(c)(2) (b) would take 0.1 hours to prepare; (2) each disclosure required under proposed § 190.03(c)(4) would take 0.2 hours to prepare; and (3) each disclosure required under proposed § 190.07(b)(5) would take 1 hour to prepare. In terms of burden hours, this amounts to  $(0.1 * 3,333.33)$  under proposed § 190.03(c)(1) plus  $(0.1 * 3,333.33)$  under proposed § 190.03(c)(2) plus  $(0.2 * 3,333.33)$  under proposed § 190.03(c)(4) plus  $(1 * 3.33)$  under proposed § 190.07(b)(5), or a total of 1336.66 burden hours annually per respondent.



Reporting requirements in a DCO bankruptcy:<sup>13</sup>

Estimated Number of respondents: 1

Estimated Annual Number of Responses per Respondent: 2.98<sup>14</sup>

Estimated Total Annual Number of Responses for All Respondents: 2.98

Estimated Annual Number of Burden Hours Per Respondent: 0.61<sup>15</sup>

Estimated Total Annual Burden Hours for All Respondents: 0.61

Total Estimated Annual Burden Cost of All Responses: \$77.36

Type of Respondents: Derivatives clearing organization commodity brokers who have filed a petition in bankruptcy, Trustees.

Frequency of Collection: On occasion

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<sup>13</sup>The reporting requirements are contained in proposed §§ 190.12(a)(2), 190.12(b)(1), 190.12(b)(2), 190.12(c)(1) and 190.12(c)(2).

<sup>14</sup> The Commission estimates that (1) under proposed § 190.12(a)(2), a clearing organization would make two notifications per bankruptcy; (2) under proposed § 190.12(b)(1), a clearing organization would provide 40 reports to the trustee; (3) under proposed § 190.12(b)(2), a clearing organization would provide 5 reports to the trustee and the Commission; (4) under proposed § 190.12(c)(1), a clearing organization would provide 100 records to the trustee and the Commission; and (5) under proposed § 190.12(c)(2), a clearing organization would provide 2 records to the trustee and the Commission. Dividing those numbers by 50 (since the Commission anticipates a clearing organization bankruptcy occurring once every 50 years) results in (1) 0.04 reports annually pursuant to proposed § 190.12(a)(2); (2) 0.8 reports annually pursuant to proposed § 190.12(b)(1); (3) 0.1 reports annually pursuant to proposed § 190.12(b)(2); (4) 2 reports annually pursuant to proposed § 190.12(c)(1); and (5) 0.04 reports annually pursuant to proposed § 190.12(c)(2). This amounts to a total of 2.98 reports annually per respondent.

<sup>15</sup> The Commission estimates that (1) each notification required under proposed § 190.12(a)(2) would take 0.5 hours to make; (2) gathering the reports required under proposed § 190.12(b)(1) would take 0.2 hours; (3) gathering the reports required under proposed § 190.12(b)(2) would take 0.2 hours; (4) gathering the reports required under proposed § 190.12(c)(1) would take 0.2 hours; and (5) gathering the reports required under proposed § 190.12(c)(2) would take 0.2 hours. In terms of burden hours, this amounts to (0.5\*0.04 under proposed § 190.12(a)(2)) plus (0.2\*0.8 under proposed § 190.12(b)(1)) plus (0.2\*0.1 under proposed § 190.12(b)(2)) plus (0.2\*2 under proposed § 190.12(c)(1)) plus (0.2\*0.04 under proposed § 190.12(c)(2)), or a total of 0.61 burden hours annually per respondent.

Recordkeeping requirements in a DCO bankruptcy:<sup>16</sup>

Estimated Number of Respondents: 1  
Estimated Annual Number of Responses per Respondent: 9<sup>17</sup>  
Estimated Total Annual Number of Responses: 9  
Estimated Annual Number of Burden Hours per Respondent: 0.9<sup>18</sup>  
Estimated Total Annual Burden Hours: 0.9  
Total Estimated Annual Burden Cost of All Responses: \$114.52  
Type of Respondents: Trustees  
Frequency of Collection: Only during the pendency of a DCO bankruptcy: daily

Third Party Disclosures Applicable to a Single Respondent during a DCO bankruptcy:<sup>19</sup>

Estimated Number of Respondents: 1  
Estimated Annual Number of Responses per Respondent: 0.9<sup>20</sup>  
Estimated Total Annual Number of Responses: 0.9  
Estimated Average Number of Burden Hours per Respondent: 0.18<sup>21</sup>  
Estimated Total Annual Burden Hours: 0.18  
Total Estimated Annual Burden Cost of All Responses: \$22.90  
Type of Respondents: Trustees  
Frequency of Collection: On occasion

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<sup>16</sup> The recordkeeping requirements are contained in proposed § 190.14(d).

<sup>17</sup> The Commission estimates that, under proposed § 190.14(d), a clearing organization would compute a funded balance for customer accounts 450 times during a bankruptcy. This number is based on an average of 45 clearing members, each with two accounts (house and customer). Dividing that number by 50 (since the Commission anticipates a clearing organization bankruptcy occurring once every 50 years) results in 9 records annually per respondent.

<sup>18</sup> The Commission estimates that computing the funded balance of customer accounts pursuant to proposed § 190.14(d) would take 0.1 hours per computation. In terms of burden hours, this amounts to  $(0.1 \times 9)$ , or 0.9 burden hours annually per respondent.

<sup>19</sup> These third party disclosure requirements are contained in proposed § 190.14(a).

<sup>20</sup> The Commission estimates that, under proposed § 190.14(a), a trustee would make the disclosure 45 times during a bankruptcy. This number is based on an average of 45 clearing members. Dividing that number by 50 (since the Commission anticipates a clearing organization bankruptcy occurring once every 50 years) results in 0.9 records annually per respondent.

<sup>21</sup> The Commission estimates that instructing customers to file a proof of claim pursuant to proposed § 190.14(a) would take 0.2 hours. In terms of burden hours, this amounts to  $(0.2 \times 0.9)$ , or 0.18 burden hours annually per respondent.

Third Party Disclosures Applicable to Multiple Respondents During Business as Usual: <sup>22</sup>

Estimated Number of Respondents: 125  
Estimated Annual Number of Reports per Respondent: 2,000<sup>23</sup>  
Estimated Total Annual Number of Responses: 250,000  
Estimated Average Number of Burden Hours per Respondent: 40<sup>24</sup>  
Estimated Total Annual Burden Hours: 5,000  
Total Estimated Annual Burden Cost of All Responses: \$286,900  
Type of Respondents: Futures commission merchants  
Frequency of Collection: On occasion

With respect to the burden hour estimates for this information collection, the Commission notes that commodity broker liquidations occur at unpredictable and irregular intervals when particular commodity brokers become insolvent.

While no commodity broker liquidation for a futures commission merchant has occurred in the past seven years, the Commission took the conservative approach of maintaining the assumption contained in the previous renewal of this information collection that, on average, a commodity broker liquidation for a futures commission merchant would occur every three years.

Similarly, no U.S. clearing organization has ever been the subject of a bankruptcy proceeding, and none has come anywhere near insolvency. While there have been less than a handful of central counterparties worldwide that became functionally insolvent during the twentieth century, none of those were subject to modern resiliency requirements. Accordingly, the Commission believes that an assumption of one DCO bankruptcy every fifty years is quite conservative.

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<sup>22</sup> The recordkeeping requirements are contained in proposed §§ 190.10(b) and 190.10(e).

<sup>23</sup> The Commission estimates that under proposed §§ 190.10(b) and 190.10(e), an FCM would make the required disclosures 1,000 times per year. This amounts to a total of 2,000 responses annually per respondent.

<sup>24</sup> The Commission estimates that each disclosure required under §§ 190.10(b) and 190.10(e) would take 0.02 hours to make. In terms of burden hours, this amounts to (0.02\*1,000 under proposed § 190.10(b)) plus (0.02\*1,000 under proposed § 190.10(e)), or 40 burden hours annually per respondent.

With respect to the burden hour cost estimates, proposed §§ 190.10(b) and 190.10(e), respectively, require FCMs that meet the legal definition of a “commodity broker” to provide a notice and a disclosure statement to each of their new customers. Because such notices and disclosure are standardized, they likely would be prepared by clerical or non-managerial compliance personnel at an approximate compensation cost of \$57.38 per hour. Compliance with the remaining requirements that are the subject of this subject of this information collection generally falls upon a Trustee appointed in a commodity broker liquidation who likely would procure legal, accounting or other staff to assist in fulfilling the obligations at an approximate rate of \$127.24 per hour.<sup>25</sup>

- 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 startup 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**

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<sup>25</sup> For purposes of this information collection, the Commission used the salary information contained in May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at: [https://www.bls.gov/oes/current/naics4\\_523000.htm](https://www.bls.gov/oes/current/naics4_523000.htm) and multiplied by 1.3 to account for benefits. The compensation rate for a compliance specialist (\$44.14 per hour multiplied by 1.3, or \$57.38) was used for the calculations applicable to compliance with Commission regulations 190.10(b) and 190.10(e). The compensation rate for an attorney (\$97.88 per hour multiplied by 1.3, or \$127.24) was used for the calculations applicable to compliance with all other regulations that are the subject of this information collection.

**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.**

There are estimated to be no capital costs or operating and maintenance costs associated with this information collection.

- 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.**

With respect to the Commission, the costs associated with the reporting, recordkeeping, and disclosure requirements described herein are inseparable from the costs of running the bankruptcy program as a whole. There are no expenses that are exclusively attributable to the paperwork burden.

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

*See response to Item 12; federal register release for proposed rule.*

- 16. For collections 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

### Supporting Statement for Regulations Governing Bankruptcies of Commodity Brokers OMB Control No. 3038-0021

Reporting – FCMs:<sup>26</sup>

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Responses 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 (1x5)	Total Est. Annual Burden Cost of All Responses (1x7)
190.03(b)(1)	1	0.67	0.67	0.5	0.34	\$127.24	\$43.26	0.34	\$43.26
190.02(a)(2)	1	0.33	0.33	2	0.66	\$127.24	\$83.98	0.66	\$83.98
<b>TOTAL</b>	1	1	1		1		\$127.24	1	\$127.24

Recordkeeping – FCMs:

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Responses 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 (1x5)	Total Est. Annual Burden Cost of All Responses (1x7)
190.05(b)	1	13,333.33	13,333.33	0.01	133.33	\$127.24	\$16,965.33	133.33	\$16,965.33
190.05(d)	1	13,333.33	13,333.33	0.01	133.33	\$127.24	\$16,965.33	133.33	\$16,965.33
<b>TOTAL</b>	1	26,666.67	26,666.67		266.67		\$33,930.66	266.66	\$33,930.66

<sup>26</sup>Because a commodity broker liquidation is estimated to occur only once every three years, this information collection expresses such burdens in terms of those that would be imposed on one respondent during the three year period.

133.33

Third Party Disclosures Applicable to a Single Respondent -- FCMs:

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Responses 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 (1x5)	Total Est. Annual Burden Cost of All Responses (1x7)
190.03(c)(1)	1	3,333.33	3333.33	0.1	333.333	\$127.24	\$42,413.29	333.333	\$42,413.29
190.03(c)(2)	1	3,333.33	3333.33	0.1	333.333	\$127.24	\$42,413.29	333.333	\$42,413.29
190.03(c)(4)	1	3,333.33	3333.33	0.2	666.666	\$127.24	\$84,826.58	666.666	\$84,826.58
190.07(b)(5)	1	3.33	3.33	1	3.33	\$127.24	\$423.71	3.33	\$423.71
<b>TOTAL</b>	1	10,003.32	10,003.32		1,336.66		\$170,076.87	1,336.66	\$170,076.87

Reporting -- DCOs<sup>27</sup>

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Responses 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 (1X5)	Total Est. Annual Burden Cost of All Responses (1X7)
190.12(a)(2)	1	0.04	0.04	0.5	0.02	\$127.24	\$2.54	0.02	\$2.54
190.12(b)(1)	1	0.80	0.8	0.2	0.16	\$127.24	\$20.36	0.16	\$20.36
190.12(b)(2)	1	0.10	0.1	0.2	0.02	\$127.24	\$2.54	0.02	\$2.54
190.12(c)(1)	1	2.00	2	0.2	0.40	\$127.24	\$50.90	0.4	\$50.90
190.12(c)(2)	1	0.04	0.04	0.2	0.01	\$127.24	\$1.02	0.008	\$1.02
<b>TOTAL</b>	1	2.98	2.98		0.61		\$77.36	0.608	\$77.36

<sup>27</sup>Because a DCO liquidation is estimated to occur only once every fifty years, this information collection expresses such burdens in terms of those that would be imposed on one respondent during the fifty year period.



Recordkeeping – DCOs:

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Responses 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 (1x5)	Total Est. Annual Burden Cost of All Responses (1x7)
190.14(d)	1	9.00	9.00	0.1	0.9	\$127.24	\$114.52	0.9	\$114.52
<b>TOTAL</b>	1	9.00	9.00		0.9		\$114.52	0.9	\$114.52

Third Party Disclosures Applicable to a Single Respondent -- DCOs:

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Responses 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 (1x5)	Total Est. Annual Burden Cost of All Responses (1x7)
190.14(a)	1	0.90	0.90	0.2	0.18	\$127.24	\$22.90	0.18	\$22.90
<b>TOTAL</b>	1	0.90	0.90		0.18		\$22.90	0.18	\$22.90

Third Party Disclosures Applicable to a Multiple Respondents during BAU:

	1	2	3	4	5	6	7	8	9
	Est. No. of Respondents	Est. Annual Responses 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 (1x5)	Total Est. Annual Burden Cost of All Responses (1x7)
190.10(b)	125	1,000	125,000	.02	20	\$57.38	\$1,147.60	2,500	\$143,450.00
190.10€	125	1,000	125,000	.02	20	\$57.38	\$1,147.60	2,500	\$143,450.00
<b>TOTAL</b>	125	2,000	250,000		40		\$2,295.20	5,000	\$286,900.00