

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

OMB CONTROL NUMBER 3038-0024

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 is the independent federal regulatory agency charged with providing various forms of customer protection so that users of the commodity markets can be assured of the financial integrity of the markets and the intermediaries that they employ in their trading activities. Part 1 of the Commission's regulations requires, among other things, that commodity brokers – known as futures commission merchants (FCMs) comply with minimum capital requirements. In order to monitor compliance with these financial standards, the Commission has required FCMs to file financial monthly reports with the Commission and with the designated self-regulatory organization of which they are members as well as to report to the Commission should capital levels drop below prescribed minimums. (See Commission Rules 1.10, 1.12, 1.15, 1.16 and 1.17, 17 CFR 1.10, 1.12, 1.15, 1.16 and 1.17.)

Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), P.L. 111-203, 124 stat. 1376, amended the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq.*, to add, as section 4s(e) thereof, provisions concerning the setting of minimum capital requirements for swap dealers ("SDs") and major swap participants ("MSPs"). Accordingly, this collection is amended to reflect the reporting and recordkeeping requirements associated with the Commission's capital and margin rules for SDs and MSPs, as well as with conforming rules for FCMs that will operate as SDs. The collections of information that are amended by this rulemaking are necessary to implement Section 4s(e) of the CEA, which expressly requires the Commission to adopt rules governing capital requirements for SDs and MSPs. Also, the information and documentation requirements to make the capital comparability determinations would be necessary for the Commission to consider whether the requirements of the foreign rules are comparable to the applicable requirements of the Commission's rules with respect to capital adequacy and financial reporting requirements for SDs or MSPs.

- 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.**

FCMs and IBs and also SDs and MSPs, file financial statements with the Commission and the designated self-regulatory organizations (DSROs) of which they are members for the purpose of ensuring that filers are meeting their obligations as a CFTC registrant.

Information surrounding various firm risk calculations and components will be submitted to the Commission by SDs and MSPs that wish to use models to compute certain market risk and credit risk charges when establishing minimum net capital in lieu of standard table-based capital calculations. The information may be submitted electronically or by hard copy to the Commission. The collection of information will be used by the Commission to evaluate whether the SDs and MSPs capital models satisfy the regulatory standards and other requirements established by the regulations.

The substituted compliance documentation will be submitted to the Commission by SDs and MSPs that wish to seek a determination by the Commission. The Commission will use this information to determine whether such entities operate in a foreign jurisdiction that has comparable regulatory requirements to the Commission for minimum capital and financial reporting requirements. SDs and MSPs may submit the substituted compliance

documentation electronically or by hard copy. The substituted compliance documentation will provide an analysis and comparison of the foreign jurisdictions regulations to the Commission's regulations for the purpose of providing the Commission with information necessary to make a determination that the Commission's regulatory objectives would not be compromised if the Commission authorized the SDs and MSPs to satisfy its regulatory obligations under the Commission's regulations by complying with the rules and regulations of the foreign jurisdiction.

- 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 Commission's procedures enable FCMs and IBs to comply with the Rule 1.10 filing requirement by submitting electronic filings to their DSRO, with copies provided to the Commission. The same are applicable for filing requirements for SDs and MSPs. Much of the information required is included as schedules to such electronic filings.

- 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 collection of information includes the submission of information from new registrants, the SDs and MSPs that are engaged in activities that implicate new regulatory requirements. These new registrants would not have previously submitted such information to the Commission. Therefore, 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. However, with respect to FCMs that will operate as SDs, the Commission rules will not impose wholly new obligations on these FCM-SDs, but rather build upon the existing minimum financial capital requirements that are already in effect so as to avoid duplicative or inconsistent collections of information.

- 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.**

Information required under the regulation does not involve any small business or small entities. The SDs and MSPs that subject to regulation by the Commission under the Dodd-Frank Act are expected to comprise only the largest global financial firms, as the statute contemplates. Accordingly, the collections of information in the rules will not involve any small business or small entity.

- 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.**

Without frequent reporting, the Commodity Futures Trading Commission would be unable to adequately monitor FCM, IB, SD, and MSP compliance with financial standards or, as applicable, to provide timely customer protection which assures users of the financial integrity of the intermediaries that they employ in their CFTC regulated trading activities.

An SD or MSP is required to submit documentation in support of a substituted compliance determination only once.

- 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;**

See responses to questions 1, 2 and 6.

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

The rules applicable to SDs, MSPs, and FCMs that will operate as SDs contain occasional reporting obligations that may require response in fewer than 30 days. These occasional reporting obligations are limited to circumstances in which the SD, MSP, or FCM operating as an SD already have developed such reports, or circumstances in which the financial or operating condition of the SD, MSP, or FCM may be in question.

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

Respondents are not required to submit more than an original and two copies of any documents to the Commission or third parties.

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

Not applicable.

- **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;**

Not applicable.

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

Not applicable.

- **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 collection does not involve any pledge of confidentiality, requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

- 8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice required by 5 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.**

The Commission requested comments on the information collection by publication of a notice in the Federal Register on December 16, 2016 (81 FR 91252), and reopened the comment period on December 16, 2019 (84 FR 69664).

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising collection number 3038-0024 to reflect the adoption of amendments to Parts 1 and 23 of its regulations with changes to reflect adjustments that were made to the final rules in response to comments on the Proposal.

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

Not applicable. The Commission has neither considered nor made any payment or gift to a respondent.

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 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.

The regulations covered by this collection do not require the giving of sensitive information, as that term is used in Question 11.

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

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

The 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 2019 National Occupational Employment and Wage Estimates, United States, 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 \$92.59; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$90.41; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$38.29.

The Commission also notes that it 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. In addition, the Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the regulation 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 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.

As detailed in Attachment A, the Commission estimates the aggregate cost for all swap dealers and major swap participants is approximately 208,719 burden hours and \$20,871,900 [208,719 × \$100 per hour]. This burden results from the recordkeeping, disclosure and reporting provisions of the regulations listed in Attachment A. The burden hours are not anticipated to vary widely among registrants.

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

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

See Attachment A. Most of the collections do not involve start-up costs. The financial reporting requirements either are already applicable, as in the case of FCMs that will operate as SDs, or in the case of unaudited and audited financial statements, require the reporting of information that SDs and MSPs would already keep in the ordinary courses of their business. The recordkeeping obligations are routine. And the costs of filing applications and occasional notices with the Commission will be realized at the time the application will be prepared, and are included in the cost estimates that have been presented.

However, the development of software in-house or in the alternative the purchase of software in order to comply with the capital model component of the collection will involve start-up costs. In addition, the firms will be required to develop systems to process timely weekly margin and position reporting and comply with the recordkeeping and reporting obligations for capital. As such, the initial costs are estimated to span only the initial year of compliance with the rule and have been summarized in the following table.

Regulation	Number of Respondents	Total Annual Costs
23.102(a) & 1.17(c)(6)(v) -Application /Use of Use Models (FCM/SD)	32	\$3,200,000
23.105 (q) – Position & Margin Reporting (SD/MSP)	108	\$1,080,000
TOTAL INITIAL COSTS		\$4,280,000

- 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 primary costs for requesting and reviewing documents under the existing OMB Collection 3038-0024 and this amendment are the salaries and benefits for attorneys and auditors to analyze the information collected. The amendment should not add materially to existing costs, as the information collected is of the same type and amount as the existing collection.

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

Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), P.L. 111-203, 124 stat. 1376, amended the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 et seq., to add, as section 4s(e) thereof, provisions concerning the setting of minimum capital requirements for swap dealers ("SDs") and major swap participants ("MSPs"). The regulations associated with Section 731 of Dodd Frank Act require collecting additional information from SDs and MSPs and are designed to enhance the safety and soundness of the markets which the Commission oversees and to enable the Commission to evaluate the soundness of the participants in those markets. Collection 3038-0024 is amended to reflect these additional information requirements.

- 16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This question does not apply.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

This question does not apply.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

This question does not apply.

Attachment A

OMB Control Number 3038-0024 – Regulations and Forms Pertaining to Financial Integrity of the Market Place; Margin Requirements for SDs/MSPs

Reporting

1. Regulation(s) – Description (Applicable Registrant) – Rk, R, N	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
1.10(f) – Form SBS for dual registered (FCM/IB/SD)	1	1	5	5	\$100	\$500	1	5	\$500
1.12(a) & (b) – Notice of Failure to Maintain Minimum (FCM/IB/SD)	10	1	5	5	\$100	\$500	10	50	\$5,000
1.16(f) – Request Extension to File Audited Financials (FCM/SD)	1	1	5	5	\$100	\$500	1	5	\$500
23.101 (a)(7) – Request to Change Capital Election – (SD/MSP)	1	1	5	5	\$100	\$500	1	5	\$500
23.102(a) & 1.17(c)(6)(v) – Application / Use of Use Models (FCM/SD)	32	1	4,680	4,680	\$100	\$468,000	32	149,760	\$14,976,000
23.104 (a)- Equity withdrawal Relief (SD)	28	2	.5	1	\$100	\$100	56	28	\$2,800
23.105 (a) - (n) – Financial Reporting – (SD/MSP)	28	15	12.5	187.5	\$100	\$18,750	420	5,250	\$525,000
23.105 (p) – Financial Reporting for Bank SD/MSP	52	6	5.5	33	\$100	\$3,300	312	1,716	\$171,600

(Bank SD/MSP)									
23.106 - Capital Compare Determination (SD/MSP)	24	1	10	10	\$100	\$1,000	24	240	\$24,000
Totals							857	157,059	\$15,705,900

Recordkeeping

23.102(a) & 1.17(c)(6)(v) - Application / Use of Use Models (FCM/SD)	32	1	1,560	1,560	\$100	\$156,000	32	49,920	\$4,992,000
23.105 (a) - (n) - Financial Reporting - (SD/MSP)	28	15	4.2	63	\$100	\$6,250	435	1,750	\$175,000
Total							467	51,670	\$5,167,000