

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBERS 3038-0023 AND 3038-0072

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 (“Commission” or “CFTC”) amended its Form 8-R. The Form 8-R is the application form that individuals must use to register with the Commission as an associated person of a registrant, as a floor broker, or floor trader, or to be listed as a principal of a registrant (collectively, “applicants”). 17 CFR 3.10(a)(2), 3.11(a), and 3.12(c). Individual applicants have been required to use Form 8-R since 1977. *Revision of Registration Forms and Amendment of Related Rules*, 42 FR 23988 (May 11, 1977) (Form 8-R replaced Forms 2-R, 4-R and 94). Form 8-R requests information about the applicant that is necessary to assess the applicant’s fitness to engage in business as a derivatives professional, subject to regulation and oversight by the Commission. As indicated above, Form 8-R is covered by two OMB control numbers. OMB control number 3038-0023 applies to Form 8-R in connection with registering as a floor broker or floor trader, or registering as an associated person of, or being listed as a principal of, a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, floor trader firm or leverage transaction merchant.¹ OMB control number 3038-0072 applies to Form 8-R in connection with applying to be listed as a principal of a swap dealer or major swap participant.² In connection with the revision of Form 8-R, the Commission is amending collections 3038-0023 and 3038-0072 to reflect a modest increase in the information collection burdens associated with the new version of Form 8-R.

The amendments to Form 8-R are: (1) a new paragraph describing the obligation of an applicant seeking approval to engage in swaps business to satisfy the Swaps Proficiency Requirements (and explaining what constitutes satisfaction of those requirements); (2) a question asking whether the applicant has completed the Swaps Proficiency Requirements within the past two years; (3) an updated version of the FBI-mandated disclosure for persons whose fingerprints are taken for purposes other than criminal justice; a revised definition of the term “adversary

¹ OMB control number 3038-0023 also covers Commission Forms 7-R, 7-W and 8-T in connection with various registration activities involving floor brokers, floor traders, futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, floor trader firms or leverage transaction merchants, and their principals and associated persons, as applicable. Forms 7-R, 7-W and 8-T were not amended in connection with the revision of Form 8-R.

² OMB control number 3038-0072 also covers Commission Forms 7-R, 7-W and 8-T in connection with various registration activities involving swap dealers and major swap participants, and principals thereof. Forms 7-R, 7-W and 8-T were not amended in connection with the revision of Form 8-R.

action;” and (4) underlining of the terms “entity” and “person” where they occur in the text to indicate that the terms are defined in the form.

- 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 requested on Form 8-R is used by the Commission and the National Futures Association (“NFA”) to assess the applicant’s fitness to engage in business as a derivatives professional, subject to regulation and oversight by the Commission and NFA. NFA is a registered futures association authorized by the Commission to perform certain registration functions for the Commission.

- 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 collection of information is completely electronic. The Form 8-R must be completed and submitted online; it cannot be submitted manually in paper format.

- 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 or available for public disclosure through any other source. As noted above, the required information is of an individualized nature that permits NFA and the Commission to assess the individual applicant’s fitness to be employed as a derivatives professional.

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

The Form 8-R is the application form that individuals must use to register with the Commission as an associated person of a registrant, or to be listed as a principal of a registrant. The information required by the registration process is essentially limited to statutorily mandated information and basic identifying data.

- 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 collection of information on Form 8-R is utilized initially to assess the applicant’s fitness to engage in business as a derivatives professional, which is an essential component of the Commission’s regulation and oversight of the derivatives markets. Applicants must complete Form 8-R to register with the Commission, and then must update their Form 8-R when the

information that they previously supplied has changed. There is no requirement that applicants routinely or periodically complete Form 8-R.

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; there is no requirement to report information more often than quarterly.

- **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.

- **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 Commission has procedures (in Parts 145 and 147 of the Commission Regulations) to protect the confidentiality of information it receives from registrants and market participants.

- 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 *Agency Information Collection Activities: Proposed Collection Revision, Comment Request: Adoption of Revised Registration Form 8-R*, 85 FR 37922 (June 24, 2020) (“60-Day Notice”), the Commission addressed the PRA implications of the revisions to Form 8-R. The 60-Day Notice requested public comment on the PRA implications of the revisions to the 8-R. The comment period for the 60-Day Notice has not expired. No relevant comments were received.

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. 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 (in Parts 145 and 147 of the Commission Regulations) to protect the confidentiality of information it receives from registrants and market participants.

- 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 Form 8-R does not request or 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 out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

Regarding OMB control number 3038-0072, which covers users of Form 8-R that are principals of a swap dealer or major swap participant, the Commission staff estimates that in the aggregate there are 772 respondents that will experience an estimated total annual burden of 683 hours, which includes 11 additional hours attributable to the revisions to the Form 8-R.³

³ Regarding the estimated number of respondents for OMB Control No. 3038-0072, the previous estimate was 770 (from ICR Ref. No. 201502-3038-002). An additional 2 respondents were added under ICR Ref. No. 201603-3038-006, related to changes made by the Alternative to Fingerprinting Requirement For Foreign Natural Persons final rule. As a result, the total estimated number of respondents currently is 772. The revisions to Form 8-R do not change the estimated number of respondents. Regarding the estimated total annual burden hours on respondents, the previous estimate consisted of the previous burden of 667. The revisions to the Form 8-R add an additional 11 hours. Also, the estimate includes an additional 5 hours that were previously added to the collection under ICR Ref. No. 201603-3038-006. As a result, the estimated total annual burden on respondents currently is 683. This estimate includes the collection burdens associated with Forms 7-R, 7-W, 8-R and 8-T, based on the historical practice of the Commission by addressing the burden estimates in aggregate, rather than separately on a form-by-form basis, for all of the registration forms: Forms 7-R, 7-W, 8-R, and 8-W.

Regarding OMB control number 3038-0023, which covers all other users of Form 8-R, specifically floor brokers and floor traders, as well as associated persons of, and principals of, futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, floor trader firms, or leverage transaction merchants, the Commission staff estimates that in the aggregate there are 78,055 respondents that will experience an estimated total annual burden of 7,856 hours, which includes 121 additional hours attributable to the revisions to the Form 8-R.⁴

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.**

⁴ Regarding the estimated number of respondents for OMB Control No. 3038-0023, the previous estimate was 77,857 (from ICR Ref. No. 201412-3038-002). An additional 198 respondents were added under ICR Ref. No. 201604-3038-003, related to changes made by the Alternative to Fingerprinting Requirement For Foreign Natural Persons final rule. As a result, the total estimated number of respondents currently is 78,055. The revisions to Form 8-R do not change the estimated number of respondents. Regarding the estimated total annual burden hours on respondents, the previous estimate consisted of the previous burden of 7,240. The revisions to the Form 8-R add an additional 121 hours. Also, the estimate includes an additional 495 hours that were previously added to the collection under ICR Ref. No. 201604-3038-003. As a result, the estimated total annual burden on respondents currently is 7,856. This estimate includes the collection burdens associated with Forms 7-R, 7-W, 8-R and 8-T, based on the historical practice of the Commission by addressing the burden estimates in aggregate, rather than separately on a form-by-form basis, for all of the registration forms: Forms 7-R, 7-W, 8-R, and 8-W.

The proposed rule involves no new start-up or operations and maintenance costs.

- 14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

It is not anticipated that the final regulations will impose any additional costs to the Federal Government.

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

See response to 12, above. In connection with the revision of Form 8-R, the Commission is amending collections 3038-0023 and 3038-0072 (1st ICs respectively) to reflect a modest increase in the information collection burdens associated with the new version of Form 8-R. The collection burden associated with the new version of Form 8-R increased by 0.10 hours, resulting in a new collection burden of 1.1 hours for Form 8-R. However, the total burden estimate reflects the average number of hours per response across all of the registration forms (Forms 7-R, 8-R, 7-W, and 8-T), which is consistent with the historical practice of the Commission of addressing the burden estimates in aggregate, rather than separately on a form-by-form basis. Form 8-R is one of four Commission registration forms (Forms 7-R, 8-R, 7-W, and 8-T), all of which are filed on an “as needed” basis, upon registering or when registration information changes, including withdrawal of registration.

- 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.**

Not applicable.

- 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.**

Not applicable.

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

Not applicable.

Attachment A

**Registration Under the Commodity Exchange Act
(OMB Control No. 3038-0023)**

COLLECTION	ESTIMATED # OF RESPONDENTS OR RECORD KEEPERS PER YEAR	REPORTS ANNUALLY BY EACH RESPONDENT⁵	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE⁶	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
#3038-0023 (1 st IC)	77,857	0.15	12,067	0.61	7,361
#3038-0023 (2 nd IC)	198	1	198	2.5	495

**Registration of Swap Dealers and Major Swap Participants
(OMB Control No. 3038-0072)**

COLLECTION	ESTIMATED # OF RESPONDENTS OR RECORD KEEPERS PER YEAR	REPORTS ANNUALLY BY EACH RESPONDENT⁷	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE⁸	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
#3038-0072 (1 st IC)	770	1.4	1,112	0.61	678
#3038-0072 (2 nd IC)	2	1	2	2.5	5

⁵ Respondents do not necessarily file a registration form (Forms 7-R, 8-R, 7-W, and 8-T) each year. These registration forms are filed on an “as needed” basis, upon registering or when registration information changes, including withdrawal of registration. Accordingly, the estimate of the number of reports filed annually by each respondent was arrived at by calculating an average number of reports based on the number of respondent and the number of annual responses.

⁶ The burden for the Form 8-R is estimated to be 1.1 hour. However, this number reflects the average number of hours per response across all of the registration forms (Forms 7-R, 8-R, 7-W, and 8-T), which, as previously noted, is consistent with the historical practice of the Commission by addressing the burden estimates in aggregate, rather than separately on a form-by-form basis.

⁷ Respondents do not necessarily file a registration form (Forms 7-R, 8-R, 7-W, and 8-T) each year. These registration forms are filed on an “as needed” basis, upon registering or when registration information changes, including withdrawal of registration. Accordingly, the estimate of the number of reports filed annually by each respondent was arrived at by calculating an average number of reports based on the number of respondent and the number of annual responses.

⁸ The burden for the Form 8-R is estimated to be 1.1 hour. However, this number reflects the average number of hours per response across all of the registration forms (Forms 7-R, 8-R, 7-W, and 8-T), which, as previously noted, is consistent with the historical practice of the Commission by addressing the burden estimates in aggregate, rather than separately on a form-by-form basis.