

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

OMB CONTROL NUMBER 3038-0093

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.**

Derivatives markets have transitioned from the manual processes to highly electronic trading and trade matching systems. Modern DCMs and DCM market participants, in particular, are characterized by a wide array of electronic systems for the generation, transmission, management, and execution of orders, as well as systems used to confirm transactions, communicate market data, and link markets and market participants through high-speed networks. While technologies have evolved, the underlying functions of derivatives markets remain the same, as do the Commission's responsibilities under the Commodity Exchange Act (the "CEA" or "Act"). Through Risk Principles set forth in Regulation 38.251(e)-(g) and related Acceptable Practices, the Commission is taking steps to ensure that its regulatory standards and industry practices properly address current and foreseeable market disruption risks as well as other system anomalies arising from electronic trading.

The regulations are intended to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. The Commission believes that the obligations created by the new rules are essential to ensure market integrity and avoid systemic risk.

The Commission is seeking to amend control number 3038-0093. The Commission's existing regulations under Part 40 (including regulations 40.2, 40.3, 40.4, 40.5, 40.6 and 40.10) provide procedures for the submission of rules and rule amendments by DCMs and other registered entities. They establish the procedures for submitting the "written certification" required by Section 5c of the Act. In connection with a product or rule certification, the registered entity must provide a concise explanation and analysis of the submission and its compliance with statutory provisions of the Act. Accordingly, new rules or rule amendments must be accompanied by concise explanations and analyses of the purposes, operations, and effects of the submissions. This information may be submitted as part of the same submission containing the required "written certification."¹

¹ Regulation 40.10 also contains submission procedures for certain risk-related rules proposed by a systemically important derivatives clearing organization ("SIDCO"). The SIDCO regulations require, among other things, 60-days advance notice of proposed rules that may materially affect the nature or level of risk presented by the SIDCO. The information collections required by regulation 40.10 should be only minimally burdensome for registered entities.

The explanation and analysis is necessary for regulatory purposes. Product and rule submissions sometimes include minimal supporting analyses and, in certain cases, no evidentiary basis for certifications of compliance at all. Without prompt receipt of supporting information, staff must expend significant resources and time to replicate an existing analysis or to otherwise independently establish a product or rule’s compliance with applicable law. The regulations permit registered entities to support product and rule certifications in the manner that is most effective and least costly under the circumstances.

Commission regulation 38.251(e) provides that DCMs must adopt and implement rules governing market participants subject to their jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. As provided in the Acceptable Practices in Appendix B to part 38, such rules must be reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. Consistent with regulation 38.251(e) and existing part 40, DCMs are required to submit any rules addressing market disruption risks and other system anomalies resulting from electronic trading to the Commission for adoption pursuant to regulations 40.5 or 40.6. Accordingly, there would be an incremental increase in the burden hours and costs to DCMs, although such burden will largely be mitigated and/or de minimis because many DCMs currently have appropriate risk controls in place.

This collection of information is necessary to implement section 5(d)(4) (Core Principle 4) of the Act. This section provides, in pertinent part, that DCMs “shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, . . .” In addition, Section 3(b) of the Act further states that out of several purposes of the Act it is the purpose to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions and the avoidance of systemic risk.; Together with these provisions of the Act, Section 8a(5) provides the Commission with authority to promulgate rules as reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act.²

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 requested information is essential to the staff’s review of submissions and the Commission’s oversight of each DCM’s compliance with Core Principle 4 set forth in section 5(d)(4) of the Act. In particular, the requested information permits the staff to access a DCM’s regulation of electronic trading consistent with regulations 38.251(e) and (f) relating to pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. Staff generally conducts a due diligence review of new rule submissions

² New regulation 38.251(g) requires an amended collection of information addressed in a separate OMB submission and supporting statement set forth in information collection 3038-0052.

and makes an independent determination concerning the registered entity's compliance with the Act and regulations thereunder.

- 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 regulations require all submissions to be submitted to the Commission electronically.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The collection of information pursuant to regulation 38.251(e) requires information from DCMs regarding their actions taken to prevent, detect, and mitigate market disruptions and/or system anomalies associated with electronic trading. The Commission believes it largely incorporates existing rule filing requirements in part 40. However, the final rule requires DCMs to specifically address the trading risks posed by electronic trading in their markets and take reasonable measures to prevent, detect, and mitigate market disruptions and system anomalies.

- 5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), describe the methods used to minimize burden.**

The Commission has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the Regulatory Flexibility Act. DCMs have been deemed, and certified, by the Commission to not be "small entities."

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

Regulation 38.251(e) does not require the submission of information on a periodic basis. Rather, submissions will be required shortly after the adoption of the proposal by DCMs to comply with the requirements of the rule relating to market participants and the prevention, detection, and mitigation of market disruptions or system anomalies associated with electronic trading. Thereafter, submission of information will only be required pursuant to part 40 when a DCM seeks to make amendments to its electron trading risk requirements.

- 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;**

Not applicable.

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

Not applicable.

- **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. In addition, section 8(a) of the Act provides that, "unless specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." A number of narrow exceptions are set forth in Sections

8(b) and (e) of the Act permitting the Commission to disclose “Section 8 material” for (i) prior public disclosures, (ii) congressional, administrative and/or judicial proceedings, (iii) other federal departments and agencies, individual states and foreign futures authorities, and (iv) registered entity investigations.

- 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.**

A copy of the proposed regulation was published in the Federal Register on June 25, 2020, 85 FR 42761 (June 25, 2020). In the proposing Federal Register release, the Commission sought public comment on any aspect of the amended collection of information 3038-0093. The Commission received no comments in connection with control number 3038-0093.

- 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.

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.**

Please see attachment A for the estimated hour burden for the amended collection of information discussed in this supporting statement.

In calculating this cost estimate, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics ("BLS"). Commission staff arrived at an hourly rate of \$89.89 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2018) multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): "compliance officer – industry: securities, commodity contracts, and other financial investment and related activities" (50%); and "lawyer – legal services" (50%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

- 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 Item 12 above.

- 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

OMB Control Number 3038-0093 (Part 40, Provisions Common to Registered Entities)

Reporting Burden

1. Regulation(s)	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)
38.251(e)	17	2	24	48	\$89.89 ³	\$4,314.72	34	816	\$73,350.24

³ The Commission is providing a blended rate using estimated industry specific wages for Compliance Officer and Lawyers multiplied by 1.3 to account for overhead and other benefits. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities provides that the mean hourly wage for a computer programmer is compliance officer is \$44.14 and lawyer is \$97.88. The average of those wages is \$69.15. See, 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.