

**SUPPORTING STATEMENT FOR
REVISED INFORMATION COLLECTION**

Final Rule— Electronic Trading Risk Principles

OMB CONTROL NUMBER 3038-0052

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 regulations are intended to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading on designated contract markets (“DCMs”), while also modernizing the Commission’s regulatory regime given the change from open-outcry floor trading to electronic trading. The regulations also promote market integrity on all DCMs.

The Commission believes that the obligations created by the new rules are essential to ensure market integrity and avoid systemic risk.

The Commission believes that the regulations in the form of “risk principles” address and update its rules in response to the threat of market disruptions caused by potential malfunctions in electronic trading systems. The implementation of DCM rules to prevent, detect, and mitigate market disruptions and system anomalies associated with electronic trading, as well as the adoption of DCM-based pre-trade risk controls for all electronic orders, are important elements in ensuring the integrity of Commission-regulated markets and fostering market participants’ confidence in the transactions being executed on DCM platforms.

The Commission is seeking to amend control number 3038-0052. The regulations governing DCMs were originally adopted pursuant to the requirements of the Commodity Futures Modernization Act of 2000 (CFMA)¹ and more recently updated as part of the requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).² Part 38 of the Commission’s regulations governs the activities of DCMs. The information collected pursuant to part 38 is necessary for the Commission to evaluate whether entities operating as, or applying to become, DCMs comply with part 38 requirements. Collection 3038-0052 was created in response to the part 38 regulatory requirements for DCMs.

In addition, this revised information collection is necessary to implement the following provisions of the Act. Section 3(b) provides that it is the purpose of the Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and

¹ 7 U.S.C. 1 *et seq.*

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

to promote responsible innovation and fair competition among boards of trade, other markets and market participants. 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. Section 4c(a)(6) of the Act provides rulemaking authority to prohibit disruptive trading practices. Section 5(d)(4) requires boards of trade to 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.

This collection revises control number 3038-0052 by adding regulation 38.251(g) in connection with the reporting of specific market disruption events to the Commission.

Commission regulation 38.251(g) requires a DCM to promptly notify Commission staff of a significant market disruption to its electronic trading platform(s) and provide timely information on the causes and remediations. A significant market disruption is deemed to be one that causes a disruption affecting the operation of the DCM's trading platform or the ability of other market participants to trade on such DCM.

The Commission believes that the notification requirement under regulation 38.251(g) will assist the Commission's oversight and its ability to monitor and assess market disruptions across all DCMs.

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 Commission will continue to use all information previously collected under OMB Control Number 3038-0052.

With respect to **new regulation** 38.251(g), this data disclosed by DCMs to the Commission will assist in market oversight and the ability of the Commission to monitor and assess significant market disruptions across all DCMs.

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 collections of information described above will be reported electronically and contain sufficient information to convey the nature of the disruption.

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 information collection pursuant to regulation 38.251(g) adds a new DCM reporting requirement. Accordingly, such requirement is not duplicative. The regulation is necessary to make clear that DCMs must report to the Commission promptly any significant market disruption resulting from electronic trading that affects the operation of a DCM's trading platform or the ability of market participants to trade on such DCM.

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 required information collected under this OMB Control Number does not involve any small businesses or other small entities. The Commission has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the Regulatory Flexibility Act (RFA). The Commission previously determined that DCMs are not small entities for the purpose of the RFA.

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 frequency of collection requirements reflect the Commission's balancing of its goal of promoting market integrity and risk reduction against the burden placed on the affected. The frequency of collection depends on the substantial nature of a market disruption that may occur on a DCM. The Commission believes that the requirements reflect the minimum reporting and disclosure that is necessary to achieve the Commission's objectives of ensuring market integrity and avoiding systemic risk.

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;**

The Commission believes that the reporting of those instances of significant market disruptions are important elements in ensuring the integrity of Commission-regulated markets and fostering market participants' confidence in the transactions being executed on DCM platforms. The Commission believes that prompt notification of a market disruption event under regulation 38.251(g) will greatly assist the Commission's oversight and its ability to monitor and assess market disruptions across all DCMs.

- **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;**

DCMs are required to maintain records of all activities related to their business as a contract market, in a form and manner acceptable to the Commission, for a period of five years from the date thereof and shall be readily accessible during the first two years of the five year period, pursuant to Commission Regulations 1.31 and 38.950 (Recordkeeping). All such books and records are open to inspection by any representative of the Commission or the U.S. Department of Justice.

- **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 July 15, 2020, 85 FR 42761 (July 15, 2020). In the proposing Federal Register release, the Commission sought public comment on any aspect of the proposed collection of information 3038-0052.

The Commission received one comment regarding its PRA burden analysis in the preamble to the proposal.³ CME in its comment letter asserted the operation of proposed regulation 38.251(g) is unclear, and the Commission's estimate of approximately 50 notifications per year is much higher than what CME would have expected. CME asserted that since 2011 it brought approximately 59 disciplinary actions for electronic trading activity that may have disrupted markets or other participants but only three of those cases were determined to be a potential significant disruption to the operations of the CME. Accordingly, CME questioned "whether the Commission has an interpretation of 'significant disruption' that is not reflected in its proposal" based on the apparent differences in notification estimates by the Commission and CME.⁴

The Commission notes that the CME did not in its comments explain how their estimate was determined or what criteria or standard was employed as part of this analysis. In effect, CME is attempting to use the number of actual disciplinary actions brought against market participants for disruptions that could be detrimental to the exchange as a "proxy" for the "substantial disruption" standard set forth in Regulation 38.251(g). The Commission does not believe the number of actual disciplinary cases brought by an exchange is an appropriate proxy for reportable market disruption events,⁵ and submits that basing a market disruption reportable event on whether it is subject to a formal disciplinary action would be under-inclusive.

The Commission, however, has revised its estimate of annual reportable market disruption events per DCM to be within a range of 0-25 rather than the proposed estimate of approximately 50 per DCM. The Commission believes that a range of reportable events between 0-25 may better reflect the potential number of annual reportable significant market disruption

³ See letter from Julie Holzrichter, Chief Operating Officer, CME Group Inc. ("CME") to Christopher Kirkpatrick, Secretary, Commission, dated August 21, 2020 ("CME Letter"), at 8.

⁴ *Id.*

⁵ The Commission submits that a reportable event does not necessarily mean that a disciplinary case is required but instead suggests that there has been a problem with the operation of the electronic trading platform that requires additional review and oversight. Accordingly, the notification of a significant market disruption would typically start a specific regulatory oversight process by the Commission not establish the particular requirements that may or may not merit the bringing of a disciplinary action, as CME suggests.

events for each DCM based on differences in DCM operations and market participants accessing those DCMs. The Commission is accordingly revising this OMB Collection 3038-0052 to reflect the range of potential annual reportable events by each DCM to be between 0 and 25.

In connection with the Commission's request for comment in the proposal regarding whether the proposed information collections are necessary for the proper performance of Commission functions, the CME questioned the "practical utility" of receiving notification pursuant to Regulation 38.251(g) arguing that the Commission already collects information on these types of events through regular engagement and review of a DCM's compliance with core principles.⁶ The Commission does not agree with the CME's assertion that the notification may serve no practical utility based on the assumption that the Commission collects this type of information from the CME through regular engagement and review of CME's compliance with core principles. The purpose of the notification requirement adopted in Commission regulation § 38.251(g) is for Commission staff to receive prompt notice of a market disruption impacting a DCM's trading platform(s). This notification is intended to assist the Commission in its oversight of the derivatives markets with the ability to monitor and assess market disruptions across DCMs on a near real-time basis. CME's argument that the current "regular" engagement and review of CME's compliance with core principles is sufficient for this purpose is not persuasive and would not otherwise provide the Commission with sufficient capability to address and monitor significant market disruptions on a near real-time basis.

Lastly, CME commented on the Commission's request in the proposal relating to whether there are ways to minimize the burden of the proposed collections of information on DCMs, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques. In its comment to this request, CME indicated that it "currently provides CFTC staff near real-time notifications of velocity logic events. Although the Commission believes that the daily file that CME voluntarily provides relating to velocity logic events⁷ to be helpful in certain circumstances, the Commission believes that a uniform standard across DCMs relating to "reportable events" for significant market disruption events is necessary for its oversight and regulatory responsibilities under the CEA.

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.

⁶ CME Letter at 16.

⁷ Although not explained in CME's Letter "Velocity Logic" is detailed on CME's website to be "designed to detect market movement of a predefined number of points either up or down within a predefined time. Velocity Logic introduces a momentary suspension in matching by transitioning the futures instrument(s) and related options into the Reserved/Pause State. <https://www.cmegroup.com/confluence/display/EPICSANDBOX/Velocity+Logic>.

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 for reporting, 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 \$76.44 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 2019) 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): "computer programmer – industry: securities, commodity contracts, and other financial investment and related activities" (25% weight); "compliance officer – industry: securities, commodity contracts, and other financial investment and related activities" (50%); and "lawyer – legal services"

(25%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

In calculating this cost estimate for recordkeeping, 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 \$71.019 using figures from the most recent BLS Occupational Employment and Wages Report (May 2019) multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a the mean hourly wages for "database administrators and architects". 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 3038-0052 Core Principles and Other Requirements for DCMs

Reporting Burden

1. Regulation (s)	2. Estimated Number of Respondents	3. Estimate d Number of Reports by Each Respondent	4. Estimate d Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimate d 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(g)	17	[0-25]	5	[0-125]	\$76.44 ⁸	[\$0-9,555]	[0-425] ⁹	[0-2,125] ¹⁰	[\$0-162,435]

⁸ The Commission is providing a blended rate using estimated industry specific wages for Computer Programmer, 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 \$51.02, compliance officer is \$44.14, and lawyer is \$97.88. The average of those wages is \$58.8. 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.

⁹ Based on the annual aggregate range of potential notifications under final §38.251(g) from 0 to 425 for all DCMs, the Commission estimates that the average annual aggregate notifications for all DCMs is 212.50 with the annual average number of notifications per DCM to be 13.28.

¹⁰ The Commission estimates that the total aggregate annual burden hours for DCMs under final §38.251(g) would be a range between 0 and 2,125 hours based on each DCM incurring between 0 hours (0 x 17 = 0 burden hours) and 2,125 hours (125 x 17 = 2,125 burden hours). Based on these estimates, the Commission has determined that the annual average aggregate burden hours for all DCMs to be 1,062.50 burden hours with an annual average burden hour for each DCM to be 66.406 burden hours.

Recordkeeping Burden

1. Regulation (s)	2. Estimate d Number of Respond ents	3. Estimate d Number of Reports by Each Respond ent	4. Estima ted Averag e Numbe r of Burden Hours per Respo nse	5. Annual Number of Burden Hours per Respond ent (3 x 4)	6. Estima ted Averag e Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Respon ses (2 x 3)	9. Total Annu al Numb er of Burde n Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
38.950 and 38.951	17	[0-25]	2	[0 – 50]	\$71.01 g ¹¹	[\$0-3,550.95]	[0-425]	[0- 850] ¹²	[\$0- 60,366.15]

¹¹ The Commission is providing a rate using estimated industry specific wages for Database Administrators and Architects 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 database administrator and architect is \$54.63. 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.

¹² The Commission calculates that the annual average aggregate recordkeeping burden hours for all DCMs to be 400 burden hours with an annual average recordkeeping burden hour for each DCM to be 25 burden hours.