

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION
COLLECTIONS

OMB CONTROL NUMBER 3038-0062

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.

Part 5 of the Commission's regulations under the CEA establishes rules applicable to retail foreign exchange dealers ("RFEDs"), futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity trading advisors ("CTAs"), and commodity pool operators ("CPOs") engaged in the offer and sale of off-exchange forex contracts to retail customers. Specifically:

- Regulation 5.5 requires RFEDs, FCMs, and IBs to distribute risk disclosure statements to new retail forex customers.
- Regulation 5.6 requires RFEDs and FCMs to report any failures to maintain the minimum capital required by Commission regulations.
- Regulation 5.8 requires RFEDs and FCMs to calculate their total retail forex obligation.
- Regulation 5.10 requires RFEDs to maintain and preserve certain risk assessment documentation.
- Regulation 5.11(a)(1) requires RFEDs to submit certain risk assessment documentation to the Commission within 60 days of the effective date of their registration.
- Regulation 5.11(a)(2) requires RFEDs to submit certain financial documentation to the Commission within 105 calendar days of the end of each fiscal year. RFEDs must also submit additional information, if requested, regarding affiliates' financial impact on an RFED's organizational structure.
- Regulation 5.12(a) requires RFED applicants to submit a Form 1-FR-FCM concurrently with their registration application.
- Regulation 5.12(b) requires registered RFEDs to file a Form 1-FR-FCM on a monthly and annual basis.
- Regulation 5.12(g) states that, in the event that an RFED cannot file its Form 1-FR-FCM for any period within the time specified in Regulation 5.12(b), the RFED may file an application for an extension of time with its self-regulatory organization.
- Regulation 5.13(a) requires RFEDs and FCMs to provide monthly account statements to their customers.
- Regulation 5.13(b) requires RFEDs and FCMs to provide confirmation statements to their customers within one business day after the execution of any retail forex or forex

option transaction.

- Regulation 5.14 requires RFEDs and FCMs to maintain current ledgers of each transaction affecting its asset, liability, income, expense and capital accounts.
- Regulation 5.18(g) requires each RFED, FCM, CPO, CTA, and IB subject to Part 5 to maintain a record of all communications received that give rise to possible violations of the Act, rules, regulations or orders thereunder related to their retail forex business.
- Regulation 5.18(i) requires each RFED and FCM to prepare and maintain on a quarterly basis a calculation of non-discretionary retail forex customer accounts open for any period of time during the quarter that were profitable, and the percentage of such accounts that were not profitable.
- Regulation 5.18(j) requires the CCO of each RFED and FCM to certify annually that the firm has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with the Act, rules, regulations and orders thereunder.
- Regulation 5.19 requires each RFED, FCM, CPO, CTA, and IB subject to Part 5 to submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed in any material legal proceeding (1) to which the firm is a party to or to which its property or assets is subject with respect to retail forex transactions, or (2) instituted against any person who is a principal of the firm arising from conduct in such person's capacity as a principal of that firm.
- Regulation 5.20 requires RFEDs, FCMs and IBs to submit documentation requested pursuant to certain types of special calls by the Commission.
- Regulation 5.23 requires RFEDs, FCMs and IBs to notify the Commission regarding bulk transfers and bulk liquidations of customer accounts.

The rules establish reporting and recordkeeping requirements that are necessary to implement the provisions of the Food, Conservation, and Energy Act of 2008¹ regarding off-exchange transactions in foreign currency with members of the public. The rules are intended to promote customer protection by providing safeguards against irresponsible or fraudulent business practices.²

Estimated numbers of respondents and projected total annual responses and average number of hours per response are provided in Attachment A.

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 Part 5 requirements fall into the following general categories: reporting, recordkeeping and third-party disclosure requirements. Reporting and recordkeeping requirements are necessary to ensure that filers are meeting their obligations as registrants and to assist the Commission in monitoring compliance with Commission regulations. Third-party

¹ Public Law 110-246, 122 Stat. 1651, 2189-220 (2008).

² See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 Fed. Reg. 55410, 55416 (Sept. 10, 2010).

disclosure requirements were established to promote customer protection.

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.

Electronic filing or submission is acceptable for the information collections required by Part 5.

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 collections of information do not duplicate any existing collection of information. No laws or regulations requiring similar collections of information involving the relevant entities existed prior to their initial promulgation in 2010.

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

This collection of information will not have a significant impact on a substantial number of 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.

Failure to obtain information and maintain records as provided for in the regulations will adversely affect customer protection safeguards that guard against irresponsible or fraudulent business practices. Frequent financial reporting is necessary for the Commission to ensure that registrants are in compliance with the financial standards set forth in Commission regulations. With regard to collections of information based on the occurrence of certain events (i.e., early warning notices, and submission to the Commission of customer complaints and documentation of dispositive legal actions), the required submissions are no more frequent than is necessary to provide the Commission with timely information regarding the financial status and conduct of its registrants. Finally, disclosure requirements are triggered by the opening of customer accounts, and are no more frequent than is necessary to provide customers with important information regarding the nature of retail forex transactions.

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 response to Question 6, above.

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 document.

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

Commission Regulation 1.31(b) expressly requires that books and records required to be kept by the CEA or Commission regulations be retained for certain specified periods. Other than with respect to oral communications and records exclusively created and maintained on paper, the shortest of these periods is five years from the date of creation. 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:

The rules do not involve statistical surveys.

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

The rules do not involve the use of statistical data.

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 rules do not involve pledges 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 rules do not involve submission of proprietary trade secrets or other such information to the Commission. 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.

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.

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.

The Commission sought public comment on the proposed collection of information. A copy of the Federal Register notice (85 FR 67721, Oct. 26, 2020) soliciting comments is attached. No relevant comments were received.

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

Not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute¹, regulation, or agency policy.

The Commission does not provide respondents with an assurance of confidentiality. 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 question 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 difference 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 83-1.

Provide estimates of annualized cost to respondents for the hour 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 rules require 146 respondents to submit 38,801,982 responses, each of which takes varied response times, for a total annual burden of 418,286 hours. Assuming a professional wage category of \$100 per hour for preparation, the annual cost is estimated to be \$41,828,600 as a total for all respondents.

In support of this determination, In support of this determination, the Commission notes that the salary estimate is based upon May 2018 Bureau of Labor Statistics' findings of National Occupation 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 \$96.26; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is \$100.56; and the mean hourly wage of an employee under occupation code-13-1041, "Compliance Officers" in the same industry, which is \$43.03. The Commission also notes that, the Commission 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. The Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the combined final regulations 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. Accordingly, the costs in this supporting statement were determined using an average salary of \$100 per hour. The Commission believes that this is an appropriate salary estimate for purposes of the regulation.

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 cost 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 but information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (few 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. This information collection does not involve any 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.

The primary costs for reviewing, and analyzing documents under this collection are the salaries and benefits of existing staff, including auditors and attorneys. Part 5 does not add to existing costs.

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

The numbers in these estimates have been adjusted to account for a revised number of registrants in each registration category.³ For example, there now are four RFEDs, which double the number there were the last time that this collection was renewed, which was in 2017.⁴ Additionally, the number of forex firm FCMs increased from seven to twelve. Likewise, NFA records indicate that the number of forex CPOs has decreased from 74 to 50. The Commission continues to believe that the 2017 estimates as to the number of clients and the hour burdens (and related costs per hour) remain accurate. As a result, the primary changes in burden hours and associated costs result from changes in the number of registrants that are required to comply with the relevant regulatory requirements.⁵

³ For detailed information on the number of relevant registrants, see [Membership and Directories](#).

⁴ Although some of the same entities show up in different burden requirements, the total number of entities required to respond to the relevant regulations is 146.

⁵ Additionally, the numbers have increased because the 2017 collection renewal contained a few calculation errors (in the form of misplaced decimal points) that resulted in an underestimation of the burden hours. Those errors have been corrected with this collection renewal.

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

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 83-1.

No exceptions exist.

Attachment A

OMB Collection File 3038-0062

ANNUAL ESTIMATED BURDENS

REPORTING BURDEN

Regulations (17)	Estimated number of entities	Estimated annual responses per entity	Total annual responses	Estimated number of hours per response	Estimated average cost per response	Total annual burden-hours	Total annual burden-cost
5.5							
RFEDs	4	25	100	185	\$185	18,500	\$18,500
FCMs	12	25	300	185	\$185	55,500	\$10,267,500
IBs	41	15	615	185	\$185	113,775	\$133,200
5.6							
RFEDs	2	1	2	100	\$100	200	\$200,000
FCMs	2	1	2	100	\$100	200	\$200,000
5.11(a)(1)							
RFEDs	0	1	0	1	\$100	0	0
5.11(a)(2)							
RFEDs	4	1	4	2	\$200	8	\$800
5.12(a)							
RFEDs	0	1	0	2	\$200	0	0
5.12(b)							
RFEDs	4	12	48	2	\$200	96	\$9,600
5.12(g)							
RFEDs	2	1	2	0.25	\$25	0.50	\$50
5.18(j)							
RFEDs	4	1	4	0.75	\$75	3.00	\$300
FCMs	12	1	12	0.75	\$75	9	\$675
5.19							
RFEDs	4	1	4	0.25	\$25	1.00	\$100
FCMs	12	2	24	0.25	\$25	6.00	\$600
IBs	41	2	82	0.25	\$25	20.5	\$2,050
CPOs	39	2	78	0.25	\$25	19.5	\$1,950
CTAs	50	2	100	0.25	\$25	25	\$2,500
5.20							
RFEDs	4	1	4	1	\$100	4	\$400
FCMs	12	1	12	1	\$100	12	\$1,200
IBs	41	1	41	1	\$100	41	\$4,100

5.23								
RFEDs	2	500	1,000	0.25	\$25	250	\$25,000	
FCMs	2	500	1,000	0.25	\$25	250	\$25,000	
IBs	3	100	300	0.25	\$25	75	\$7,500	
						188,995.5 [Reporting total]		

RECORDKEEPING BURDEN

Regulations (17 CFR)	Estimated number of entities	Estimated annual responses per entity	Total annual responses	Estimated number of hours per response	Estimated average cost per response	Total annual burden-hours	Total annual burden-cost
5.8							
RFEDs	4	252	1,008	0.25	\$25	252	\$25,200
FCMs	12	252	3,024	0.25	\$25	756	\$75,600
5.10							
RFEDs	4	1	4	200	\$20,000	800	\$80,000
5.14							
RFEDs	4	252	1,008	0.25	\$25	252	\$25,200
FCMs	12	252	3,024	0.25	\$25	756	\$75,600
5.18(g)							
RFEDs	4	5	20	0.25	\$50	5	\$500
FCMs	12	5	60	0.25	\$25	15	\$1,500
IBs	41	5	205	0.25	\$25	51.25	\$5,125
CPOs	39	5	196	0.25	\$25	48.75	\$4,875
CTAs	50	5	250	0.25	\$25	62.50	\$6,250
5.18(i)							
RFEDs	4	4	16	0.50	\$50	8	\$800
FCMs	12	4	48	0.50	\$50	24	\$2,400
IBs	41	4	164	0.50	\$50	82	\$8,200
CPOs	39	4	156	0.50	\$50	78	\$7,800
CTAs	50	4	200	0.50	\$50	100	\$10,000
						3,290.5 [Recordkeeping total]	

THIRD-PARTY DISCLOSURE BURDEN

Regulations (17 CFR)	Estimated number of entities	Estimated annual responses per entity	Total annual responses	Estimated number of hours per response	Estimated average cost per response	Total annual burden-hours	Total annual burden-cost
5.13(a)							
RFEDs	4	6,000	24,000	0.25	\$25	6,000	\$600,000
FCMs	12	6,000	72,000	0.25	\$25	18,000	\$1,800,000
5.13(b)							
RFEDs	4	126,000	504,000	0.10	\$10	50,400	\$5,040,000
FCMs	12	126,000	1,512,000	0.10	\$10	151,600	\$15,120,000
						226,000 [Third-party disclosure total]	
						418,286 [Overall total]	