

SUPPORTING STATEMENT FOR NEW AND  
REVISED INFORMATION COLLECTIONS  
OMB CONTROL NUMBER 3038-0026

**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.**

In an effort to prevent the bankruptcy of futures commission merchants (“FCMs”) that are not members of any commodity exchange the Commission adopted Regulation 1.58 to require that FCMs margin omnibus accounts on a gross, rather than a net, basis. The rule provides that the carrying FCM need not collect margin for positions traded by a person through an omnibus account in excess of the amount that would be required if the same person, instead of trading through an omnibus account, maintained its own account with the carrying FCM. Therefore, if particular positions in an omnibus account are part of a spread or hedge transaction, and thus would have lower margins than outright positions, the carrying FCM need only collect such lower margin levels. To prevent abuse of this exception and to ensure these exceptions to gross margining comply and are appropriately documented a carrying FCM must obtain and maintain a written representation from the originating FCM or foreign broker that the particular positions held in the omnibus account are part of a hedge or spread transaction. This collection of information by carrying FCMs documents the permissible exception to gross margining for examination and compliance purposes. This collection of information is necessary in order to provide documentation that can be inspected with regard to questions of proper compliance with gross margining requirements.

- 2. Indicate how, by whom, and for what purpose the information is to 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 is collected by carrying FCMs. The information is open to inspection by the commodity exchanges, National Futures Association and the United States Department of Justice. The information may also be examined during audits of the originating FCM to determine whether such written representations are consistent with the originating FCM’s other records regarding its omnibus accounts and to determine whether the originating FCM has been properly margining such accounts. The information may be used by the carrying FCM to demonstrate that it is collecting the proper amount of margin for positions carried in the omnibus accounts and serves as a reminder to both the FCM or foreign broker originating the omnibus account and the carrying FCM that gross margining is required, except in the limited circumstances permitted by Regulation 1.58. Without this information collection requirement, there would be no readily available indication that FCMs were complying with Regulation 1.58

and the goal of the regulation, protection of the financial stability of non-member FCMs, would be jeopardized.

- 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 information required by Regulation 1.58 could be collected and stored electronically. Information technology and systems are already in use by the relevant businesses.

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

There are no similar data presently available.

- 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 collection of information does not include small businesses.

- 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 maintain a written representation from the originating FCM or foreign broker that the particular positions held in the omnibus account are part of a hedge or spread transaction will adversely affect the Commission's ability to determine whether such written representations are consistent with the originating FCM's other records regarding its omnibus accounts and to determine whether the originating FCM has been properly margining such accounts. The information is used by the carrying FCM to demonstrate that it is collecting the proper amount of margin for positions carried in the omnibus accounts and serves as a reminder to both the FCM or foreign broker originating the omnibus account and the carrying FCM that gross margining is required, except in the limited circumstances permitted by Regulation 1.58. The NFA and CFTC may inspect the information to verify compliance with Regulation 1.58.

- 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;**

Not applicable.

- **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;**

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**

This collection does not include a pledge of confidentiality.

- **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 a respondent's information. 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.**

A copy of the *Federal Register* notice soliciting comments on this collection, 85 FR 76037 (November 27, 2020), is attached. The Commission received no comments.

**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.**

As set forth above, the Commission affirmatively sought comments on the extension of information collection requirements described herein.

**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.**

Does not apply. The collections of information are ongoing collections that affected persons will need to perform in order to be able to comply with substantive regulatory obligations.

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

Not applicable. No payments or gifts are provided.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, 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 CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, 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 a respondent’s data set forth in part 145 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 data collection requirements relating to this information contain no sensitive items 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 OMB Form 83-I.**
  - **Provide estimates of annualized cost to respondents for the hours burden 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. Rule 1.58 requires 53 respondents to submit 212 responses, each of which takes .08 hours per response, for a total annual burden of 17 hours. Assuming a professional wage category of \$100 per hour for preparation, the annual cost is estimated to be \$32.00 per respondent or \$1,696 as a total for all respondents.

In support of this determination, the Commission notes that the salary estimate is based upon May 2019 Bureau of Labor Statistics' findings of National Occupation Employment and Wage Estimates, United States<sup>1</sup>, including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage Industry," which is \$96.18; 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.

13. **Provide an estimate of the total annual cost burden to respondents or record keepers 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 factor 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**

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<sup>1</sup> See [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).

**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.**

FCMs will utilize existing software, information technology and systems. Thus, the Commission believes that there will not be additional capital/startup costs or operational/maintenance costs incurred by FCMs to report the information required by the regulations to the Commission.

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 federal government incurs no cost specifically attributable to this information collection requirement.

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

Annual responses changed due to a decrease of number of participants in the industry.

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

This question does not apply.

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

This question does not apply.

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

This question does not apply.



**ATTACHMENT A**

**#3038-0026 – GROSS MARGINING OF OMNIBUS ACCOUNTS**

**ACTION: EXTENSION**

<b>REGULATION</b>	<b>ESTIMATED # OF RESPONDENTS OR RECORDKEEPERS PER YEAR</b>	<b>REPORTS ANNUALLY BY EACH RESPONDENT</b>	<b>TOTAL ANNUAL RESPONSES</b>	<b>ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE</b>	<b>ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR</b>	<b>COST PER RESPONDENT<sup>2</sup></b>	<b>TOTAL ANNUAL COST OF ALL RESPONSES</b>
<b>17 C.F.R. §1.58 GROSS MARGINING OF OMNIBUS ACCOUNTS</b>	<b>53</b>	<b>4</b>	<b>212</b>	<b>.08</b>	<b>17</b>	<b>\$32.00</b>	<b>\$1,696</b>

<sup>2</sup> The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$100 per hour. The Commission believes that this is an appropriate salary estimate for purposes of this regulation. In support of this determination, the Commission notes that the salary estimate is based upon May 2019 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 and Commodity Contracts Intermediation and Brokerage Industry,” which is \$96.18; 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. [See http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).