

SUPPORTING STATEMENT FOR REVISED INFORMATION COLLECTION

OMB CONTROL NUMBER 3038-0076

REQUIREMENTS FOR DERIVATIVE CLEARING ORGANIZATIONS

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.

Section 5b(a) of the Commodity Exchange Act (“CEA”) provides that a clearing organization may not perform the functions of a derivatives clearing organization (“DCO”) unless the clearing organization is registered with the Commission. In order to register and maintain registration with the Commission, a DCO must comply with the DCO Core Principles and all applicable Commission regulations. This information collection, as a whole, covers the burden associated with Part 39 of the Commission’s regulations applicable to registered DCOs, including requirements related to DCO governance.

On July 13, 2023, the Commission adopted the final rule titled “Governance Requirements for Derivatives Clearing Organizations” (“Final Rule”), which amends § 39.24 to require DCOs to establish and consult with one or more risk management committees (“RMCs”) comprised of clearing members and customers of clearing members on matters that could materially affect the risk profile of the DCO. *See* 88 FR 44675 (Jul. 13, 2023). In addition, the Final Rule sets minimum requirements for RMC composition and rotation, and requires DCOs to establish and enforce fitness standards for RMC members. The Final Rule also adopts requirements for DCOs to maintain written policies and procedures governing the RMC consultation process and the role of RMC members. Finally, the Final Rule requires DCOs to establish one or more market participant risk advisory working groups (“RWGs”) that must convene at least two times per year, and adopt written policies and procedures related to the formation and role of the RWG.

The Commission is revising its burden estimate for OMB control number 3038-0076 to account for new information collections set forth in the Final Rule. Specifically, the Commission believes that the burden under this clearance will increase because the 15 DCOs subject to these requirements will be required under § 39.24(b)(11) to create and maintain minutes of each RMC meeting, and under § 39.24(b)(12) to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

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.

Generally, the information received is analyzed by Commission staff to determine DCO compliance with Regulation 39.24. In addition, DCOs will maintain this information as part of their internal corporate governance recordkeeping, consistent with industry best practice.

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 this collection is required to be filed 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.

To the maximum extent possible, the information collection was designed to avoid duplication. In all cases where it was possible to leverage information collections contained in other Commission rules, the Commission elected not to impose collections that would increase burden. The required information is not already collected by the Commission for any other purpose, collected by any other agency, or available for public disclosure through any other source. Each information collection is necessary given the purposes for which the data will be used, as stated above in Questions 1 and 2.

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 does not involve any small businesses or other 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.

If the collections were conducted less frequently, the Commission would not have sufficient information to ascertain whether DCOs are in compliance with the statutory and regulatory requirements applicable to their operation as registered DCOs.

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 collection requires DCOs to create and maintain minutes of each RMC meeting and to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG. As both of these groups are required to meet as often as is necessary to address

matters that could materially affect the risk profile of the DCO, which could be more frequently than quarterly.

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

This does not apply.

requiring respondents to submit more than an original and two copies of any document:

Only single copies of documents are required.

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. The collection currently includes recordkeeping requirements for registered DCOs.

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:

No statistical surveys are involved in the amended regulations.

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

The requirements do not involve the use of statistical data classification.

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 requirements do not involve any pledge of confidentiality that is not supported by authority established in law or regulation.

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.

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 C.F.R. 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 three 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.

As described above, on July 13, 2023, the Commission published a Final Rule adopting amendments that included new information collection requirements. *See* Final Rule, *Governance Requirements for Derivatives Clearing Organizations*, 88 FR 44674 (July 13, 2023). Because the Final Rule contained new information collections, the Commission published a request for comment on its proposal to revise Collection No. 3038-0076 to account for the burden associated with these new information collections (“60-Day FRN”). 88 FR 44781 (Jul. 13, 2023). The Commission received no relevant comments in response to the 60-Day FRN addressing its PRA burden estimates.

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

This question does not apply. The information collection does not involve 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.

This question does not apply. None of the required information is sensitive, 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.

Burden hours and costs were estimated based on existing information collections for DCO governance disclosures. See Attachment A.

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 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.

There are no additional capital and start-up or operations and maintenance costs associated with the proposed information collections.

Accordingly, the capital and start-up or operations and maintenance costs associated with this collection remain \$905,674. See ICR Ref. No. 202308-3038-003 (completed Oct. 16, 2023).

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.

As it relates to the existing burden, the estimate of the annual cost to the government per respondent for daily, annual, and event-specific reporting is about \$9462 per year. This reflects the cost of staff needed to analyze the information received, as follows: a full-time equivalent reviewing for 7 hours per trading day, and an additional 70 hours per year reviewing other required reports at an average salary of \$83¹ per hour. The total number of hours of review time per respondent each year is 114 hours, and the total annual cost for all 13 registered DCOs is \$123,006. In addition, the Commission previously estimated that the costs for staff to process applications for registration with alternative compliance received pursuant to § 39.3(a)(3), and to periodically review reports, disclosures, and records for compliance with the conditions of registration, would translate into five Commission employees at the CT-14 level, who will spend approximately 10% of their time performing these tasks. At an estimated salary cost of

¹ Average hourly salary based on the Commission's CFTC 2023 Pay Chart (with adjusted locality pay): <https://www.cftc.gov/media/8026/CFTC2023paytables010123/download>

\$93 per hour per employee, the costs to the government will be approximately \$96,720.² In total the previous total cost estimate was \$219,726.

As mentioned above, the Commission is revising its burden estimate for OMB control number 3038-0076 to account for two of the amendments set forth in the final rule. Specifically, the Commission believes that the burden under this clearance will increase because the 15 DCOs subject to these requirements will be required under § 39.24(b)(11) to create and maintain minutes of each RMC meeting, and under § 39.24(b)(12) to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG. As a result of these provisions, the Commission conservatively anticipates 10 total reports per year. The Commission estimates that it will take a full-time equivalent employee 2 hours to review each report. At an estimated salary cost of \$93 per hour per employee, the costs to the government will be approximately \$1,860 per year. Therefore, the updated total cost estimate is \$221,586 (\$219,726 + \$1,860 = \$221,586).

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

The Commission is revising its burden estimate for OMB control number 3038-0076 to account for two of the amendments set forth in the Final Rule that impose new information collection requirements. Specifically, the Commission believes that the burden under this clearance will increase because the 15 DCOs subject to these new reporting requirements will be required under § 39.24(b)(11) to create and maintain minutes of each RMC meeting, and under § 39.24(b)(12) to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG. As shown in Attachment A, these changes result in an incremental increase of 846 burden hours annually.

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.

² Five employees x [.10 x 2,080 hours per year] x \$93 per hour = \$96,720. This figure is based on an average of CT-14 salaries for employees in Washington, DC and Chicago based on the Commission’s CFTC 2023 Pay Chart. This figure does not include employee benefits.

Attachment A
Requirements for Derivatives Clearing Organizations
OMB Collection File 3038-0076

The burden associated with rules implementing requirements for DCOs is estimated as follows:

	1 Estimated # of Respon- dents	2 Est. Annual Reports per Respondent	3 Est. Total Annual Responses (1x2)	4 Est. Avg. No. of Hours Per Response	5 Est. Annual No. of Burden Hours Per Respondent (2x4)	6 Est. Avg. Burden Hour Cost	7 Est. Avg. Burden Cost Per Respondent (5x6)	8 Est. Total Annual Burden Hours (3x4)	9 Total Est. Annual Burden Cost of All Responses (1x7)
REPORTING									
Subpart A⁰ Reporting									
Form DCO and Exhibits	1	1	1	421	421	\$250	\$105,250	421	\$105,250
Alternative DCO Application – 39.3(a)(3)	1	1	1	100	100	\$250	\$25,000	100	\$25,000
Agreement in writing to extend application review period-39.3(a)(7)	2	1	2	1	1	\$250	\$250	2	\$500
Request to Vacate DCO Registration-39.3(e)(1)	1	0.33	0.33	1	1	\$250	\$250	1	\$250
Total of Subpart A Reporting⁰	3	3	4	523	523		\$130,750	524	\$131,000

⁰ Taking into account an average salary of \$75-400 per hour, the calculation uses \$250 for the burden hour estimates for Subpart A. In the Commission’s experience, clearing organizations often hire outside counsel to prepare and submit these representations. While the Commission is uncertain about the billing rates that these entities may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour.

⁰ The “Total” rows for each subpart of Part 39 represent the total number of respondents in column 1, and the sum of the amounts for each item in columns 2-5 and 7-9. For Subpart A, the total number of respondents represents one applicant for full DCO registration, one applicant for DCO registration with alternative compliance, and one DCO requesting vacation. The two respondents agreeing to extend the review period are the two applicants for registration, so are not counted again.

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Subpart B Reporting									
CCO Annual Report-39.10	13	1	13	73	73	\$102 ⁰	\$7,446	949	\$96,798
Quarterly reporting- 39.11(f)(1) and (39.19(c)(2)	13	4	52	7	28	\$59 ⁰	\$1,652	364	\$21,476
Annual audited financial statements- 39.19(c)(3) and 39.11(f)(2)	13	1	13	2626	2626	\$248 ⁰	\$651,248	34,138	\$8,466,224
Daily reporting- 39.19(c)(1)	13	250	3250	0.5	125	\$46 ⁰	\$5,750	1625	\$74,750
Event-specific reporting-39.19(c) (4)	13	14	182	0.5	7	\$79 ⁰	\$553	91	\$7,189
39.21 - Public information	13	4	52	2	8	\$46	\$368	104	\$4,784
REVISED IC: Governance disclosure of board decisions - 39.24(a)(3) and disclosure of governance arrangements - 39.24(b)	13 15	6 18	78 270	3 4	18 72	\$79 \$79 ⁰	\$1,422 \$5,688	234 1,080	\$18,486 \$85,320

⁰ This dollar estimate uses \$102, the Bureau of Labor Statistics mean hourly rate for category 23-1011, Lawyers, as of May 2021.

⁰ This dollar estimate uses \$59, the Bureau of Labor Statistics mean hourly rate for category 13-0000, Business and Financial Operations, as of May 2021.

⁰ This dollar amount takes into account an hourly cost of \$196 based on the most recent publicly available data on hourly audit costs in the 2015 Audit Fee Report prepared by the Financial Executives Research Foundation, <http://www.financialexecutives.org/ferf/download/2015%20Final/2015-018.pdf>, and adjusted to \$248 by the current rate of inflation, <https://www.saving.org/inflation/inflation.php?amount=196&year=2015>.

⁰ The dollar estimate uses \$46, the Bureau of Labor Statistics mean hourly rate for category 13-2099, Financial Specialist, as of May 2021.

⁰ The hour burden cost is estimated at \$79 based on a weighted average of 60% of the Bureau of Labor Statistics mean hourly wage as of May 2021 of \$102.14 for 23-1011, Lawyers, and 40% of the mean hourly wage of \$45.50 for 13-2099, Financial Specialists.

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Incremental Change								+ 846	+ \$66,834
Legal risk considerations—§ 39.27	1	0.33	0.33	20	6.6	\$250	\$1,650	6.6	\$1,650
<i>Subpart B—third- party reporting:</i>									
DCO rules re: clearing member reporting of customer information on futures-39.13(g)(8) (i)(B)	64	250	16,000	0	50	\$46	\$2,300	3,200	\$147,200
Total of Subpart B Reporting	77	530	19,640	2732	2942		\$672,389	41,588	\$8,905,391
Subpart C Reporting									
39.31 Subpart C Election Form	1	1	1	180	180	\$250	\$45,000	180	\$45,000
39.31 Withdrawal Notices	1	1	1	2	2	\$250	\$500	2	\$500
39.31 Rescission Notices	1	16	16	3	48	\$250	\$12,000	48	\$12,000
39.31 PFMI disclosures	1	1	1	200	200	\$250	\$50,000	200	\$50,000
39.31 Quantitative disclosures	1	1	1	80	80	\$250	\$20,000	80	\$20,000
39.33 Financial and Liquidity Resource Documentation	9	1	9	120	120	\$79	\$9,480	1080	\$85,320
39.36 Stress Test Results	9	16	144	14	224	\$79	\$17,696	2016	\$159,264
39.37 Disclosure Framework Requirements	9	1	9	81	81	\$79	\$6,399	729	\$57,591

⁰ The hour burden cost is estimated at \$79 based on a weighted average of 60% of the Bureau of Labor Statistics mean hourly wage as of May 2021 of \$102.14 for 23-1011, Lawyers, and 40% of the mean hourly wage of \$45.50 for 13-2099, Financial Specialists.

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39.37 Quantitative Information Disclosures	9	4	36	9	36	\$79	\$2,844	324	\$25,596
39.37 Transaction, Segregation, Portability Disclosures	9	1	9	35	35	\$79	\$2,765	315	\$24,885
39.38 Efficiency and Effectiveness Review	9	1	9	3	3	\$79	\$237	27	\$2,133
39.39 Recovery and Wind-Down Plan	9	1	9	480	480	\$79	\$37,920	4320	\$341,280
Total of Subpart C Reporting⁰	9	45	245	1,207	1,489		\$204,841	9,321	\$823,569
Subpart D-Reporting by DCOs Subject to Alternative Compliance									
Daily reporting-39.51(c)(2)(i)	6	250	1500	0.1	25	\$46	\$1,150	150	\$6,900
Quarterly reporting-39.51(c)(2)(ii)	6	4	24	1	4	\$59	\$236	24	\$1,416
Event-specific reporting-39.51(b)(3)(iii) and 39.51(c)(2)(iii)-(vii)	6	1	6	0.5	0.5	\$79	\$40	3	\$237
39.51(a)(6) - rep. of good standing	6	1	6	1	1	\$250	\$250	6	\$1,500
Total of Subpart D Reporting	6	256	1536	2.6	30.5		\$1,676	183	\$10,053
RECORDKEEPING									
Subparts A and B	13	1	13	150	150	\$99 ⁰	\$14,850	1950	\$193,050

⁰ The 9 respondents under Subpart C reporting are all subject to the same requirements; therefore, the total number of respondents for all of Subpart C is 9.

	1	2	3	4	5	6	7	8	9
	Estimated # of Respondents	Est. Annual Reports per Respondent	Est. Total Annual Responses (1x2)	Est. Avg. No. of Hours Per Response	Est. Annual No. of Burden Hours Per Respondent (2x4)	Est. Avg. Burden Hour Cost	Est. Avg. Burden Cost Per Respondent (5x6)	Est. Total Annual Burden Hours (3x4)	Total Est. Annual Burden Cost of All Responses (1x7)
	1	0.33	1	1	1	\$99	\$100	1	\$100
Total Recordkeeping Subparts A and B	13	1.33	13.33	151	\$151	\$99	\$15,100	1951	\$195,100
Recordkeeping-Subpart C									
Generally	9	110	990	10	1100	\$99	\$108,900	9900	\$980,100
Financial and Liquidity Resources, Liquidity Resource Due Diligence and Testing	9	8	72	10	80	\$99	\$7,920	720	\$71,280
Total Recordkeeping-Subpart C	9	118	1,062	20	1,180		\$116,820	10,620	\$1,051,380
Total recordkeeping Part 39	13⁰	120	1,075	172	1,332		\$131,920	12,571	\$1,246,480
CURRENT TOTAL PART 39	86							63,311	\$11,049,659
INCREMENTAL CHANGES FOR CLEARANCE #3038-0076	0							+846	+\$66,834

⁰ According to recent Bureau of Labor Statistics data (May 2021), the mean hourly wage of an employee under occupation code 11-3031, “Financial Managers,” that is employed by the “Securities and Commodity Contracts Intermediation and Brokerage” industry is \$98.64, which the Commission rounded to \$99 per hour in estimating the cost burden of all recordkeeping requirements under part 39 of its regulations.

⁰ These 13 DCOs are already included in the 86 total respondents subject to reporting requirements, so are not added to the total for Part 39 to avoid double counting.

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NEW ESTIMATED BURDEN FOR CLEARANCE #3038-0076	86 ⁰							64,157	\$11,116,493

Total Estimated Burden for Information Collection 3038-0076

Estimated number of respondents: 86

Estimated total annual number of responses: 22,745

Estimated total annual burden hours: 64,157

Estimated total annual burden cost: \$11,116,493

⁰ The 86 respondents include: 3 for Subpart A reporting, 77 (13 DCOs plus 64 FCMs) for Subpart B reporting, and 6 DCOs for Subpart D reporting. Subpart C respondents are included in the 13 DCOs also reporting under Subpart B.