

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Customer Clearing Documentation and Timing of Acceptance for Clearing

OMB CONTROL NUMBER 3038-0092

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 4d(c) of the Commodity Exchange Act (CEA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), directs the Commission to require futures commission merchants (FCMs) to implement conflict of interest procedures that address such issues as the Commission determines to be appropriate. Similarly, section 4s(j)(5), as added by the Dodd-Frank Act, requires swap dealers (SDs) and major swap participants (MSPs) to implement conflict of interest procedures that address such issues as the Commission determines to be appropriate. Section 4s(j)(5) also requires SDs and MSPs to ensure that any persons providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions from persons whose involvement in pricing, trading, or clearing activities might bias their judgment or contravene the core principle of open access. Section 4s(j)(6) of the CEA prohibits an SD and MSP from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Act. Section 2(h)(1)(B)(ii) of the CEA requires that derivatives clearing organization (DCO) rules provide for the non-discriminatory clearing of swaps executed bilaterally or through an unaffiliated designated contract market or swap execution facility.

To address these provisions, the Commission promulgated regulations that prohibit arrangements involving FCMs, SDs, MSPs, and DCOs that would (a) disclose to an FCM, SD, or MSP the identity of a customer's original executing counterparty (Regulations 1.72(a), 23.608(a), and 39.12(a)(1)(vi)); (b) limit the number of counterparties with whom a customer may enter into a trade (Regulations 1.72(b), 23.608(b), and 39.12(a)(1)(vi)); (c) restrict the size of the position a customer may take with any individual counterparty, apart from an overall credit limit for all positions held by the customer at the FCM (Regulations 1.72(c), 23.608(c), and 39.12(a)(1)(vi)); (d) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available (Regulations 1.72(d), 23.608(d), and 39.12(a)(1)(vi)); or (e) prevent compliance with specified time frames for acceptance of trades into clearing set forth in 1.74(b), 23.610(b), or 39.12(b)(7) (Regulations 1.72(e), 23.608(e), and 39.12(a)(1)(vi)). Additionally, the Commission requires, through Regulation 39.12(b)(7)(i)(B), DCOs to coordinate with clearing members to establish prompt processing of trades. Regulations 1.74(a) and 23.610(a) require reciprocal coordination by FCMs, SDs, and MSPs that are clearing members.

Under the above regulations, SDs, MSPs, FCMs, and DCOs are required to develop and maintain written customer clearing documentation and trade processing procedures. All SDs, MSPs, FCMs, and DCOs maintain documentation consistent with these regulations. The regulations are crucial both for effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs. Each of these entities has a general recordkeeping obligation for these requirements under the Commission's regulations (Regulation 39.20 for DCOs; Regulation 23.606 for SDs and MSPs; and Regulation 1.73 for FCMs).

As discussed further below, the information collection burden arising from the regulations primarily is restricted to the costs associated with the affected registrants' obligation to maintain and update customer clearing documentation between the customer and the customer's clearing member, and trade processing procedures between DCOs, FCMs, SDs, and MSPs.

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 regulations are an important part of the Commission's regulatory program for SDs, MSPs, FCMs, and DCOs. The information required to be preserved is used by representatives of the Commission to ensure compliance with the CEA and applicable Commission regulations relating to clearing activities.

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 regulations require that recordkeeping generally be performed in accordance with Commission Regulation 1.31, which permits the use of electronic storage media.

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 required information is not already collected by the Commission for any other purpose. It also is not collected by any other agency or available for public disclosure through any other source.

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 the required information does not involve any small businesses or 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 create and maintain the records required by the regulations would adversely affect the Commission's ability to ensure that SDs, MSPs, FCMs, and DCOs comply with their recordkeeping and documentation obligations under the CEA and Commission regulations. Failure to comply with the recordkeeping requirements established by the regulations would prohibit the Commission from ensuring that registrants exercise effective risk management and efficiently operate trading venues among SDs, MSPs, FCMs, and 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;**

This question does not apply. The recordkeeping requirement contained in the regulations is event-based.

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

This question does not apply.

- **requiring respondents to submit more than an original and two copies of any document;**

This question does not apply. The regulations do not impose a reporting requirement that would obligate a respondent 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 specific 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;**

This question does not apply. The regulation does not require nor involve any statistical surveys.

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

This question does not apply. The regulation does not require nor involve the use of any 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**

This question does not apply. The regulation does not require a 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.

- 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 affirmatively sought comments of the extension of information collection requirements described herein. A copy of the *Federal Register* notice soliciting comments on this collection, Agency Information Collection Activities: Notice of Intent to Renew Collection 3038-0092, Customer Clearing Documentation and Timing of Acceptance for Clearing, 88 FR 58251 (August 25, 2023) 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.**

This question does not apply. No decision to provide any payment or gift to respondents has been made.

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. 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. The regulations do not request nor require the provision 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. SDs, MSPs, FCMs, and DCOs maintain customer clearing documentation and trade processing procedures consistent with these regulations. As noted above, each of these

entities has a general recordkeeping obligation for these requirements under the Commission's regulations.

The annual burden associated with these regulations is estimated to be 40 hours, at an annual cost of \$4,800 for each FCM, SD, and MSP. This burden arises from the drafting and, as needed, updating of customer clearing documentation and trade processing procedures. The Commission estimates that FCMs, SDs, and MSPs will spend an estimated 20 hours per year to draft and update customer clearing documentation. Additionally, the Commission estimates that FCMs, SDs, and MSPs, will spend an estimated 20 hours per year to update and coordinate with DCOs on trade processing procedures. The maintenance of such contracts is prudent business practice and ongoing compliance will require a minimal burden.

For each DCO, the annual burden associated with these regulations is estimated to be 40 hours, at an annual cost of \$4,800. This burden arises from the time required to review -- and, as needed, amend -- existing customer clearing documentation and trade processing procedures to ensure that they conform to all of the required elements, and to coordinate with FCMs, SDs, and MSPs to establish reciprocal procedures. The Commission anticipates that DCOs will spend an average of 20 hours per year revising and updating customer clearing documentation and 20 hours per year to update and coordinate with FCMs, SDs, and MSPs on trade processing procedures. The maintenance of such contracts is prudent business practice and ongoing compliance will require a minimal burden.

The hour burden calculations below are based upon a number of variables such as the number of FCMs, SDs, MSPs, and DCOs in the marketplace and the average hourly wage of the employees of these registrants that would be responsible for satisfying the obligations established by the regulation.

There are currently 60 FCMs, 105 SDs, 0 MSPs, and 15 DCOs based on industry data.¹

According to the May 2022 Bureau of Labor Statistics, National Occupational Employment and Wage Estimates, the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts and Other Financial Investments and Related Activities Intermediation and Brokerage" industry is \$117.30. The annualized costs per affected registrant and in the aggregate were determined using an average salary of \$120.00 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 SDs, MSPs, FCMs, and DCOs include large financial institutions whose employees' salaries may exceed the mean wage and the Commission has therefore, estimated the cost burden on an average salary of \$120.00 per hour. The Commission recognizes that some respondents may hire outside counsel with expertise in the various regulatory areas covered by the regulation and that outside counsel may be able to

¹ NFA, Membership and Directories (July 31, 2023) available at <https://www.nfa.futures.org/registration-membership/membership-and-directories.html>; CFTC, Derivative Clearing Organizations (DCO), available at https://www.cftc.gov/IndustryOversight/IndustryFilings/ClearingOrganizations?Status=&Date_From=&Date_To=&Show_All=1.

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 estimated hour burden was calculated as follows:

Drafting and Updating Written Procedures for Compliance, and Maintaining Records Documenting Compliance for FCMs, SDs and MSPs. This hourly burden arises from the time necessary for FCMs, SDs and MSPs to revise and update records documenting compliance related to client clearing documentation.

Number of registrants: 165
Frequency of collection: as needed
Estimated number of annual responses per registrant: 1
Estimated aggregate number of annual responses: 165
Estimated annual hour burden per registrant: 20 hours
Estimated aggregate annual hour burden: 3,300 burden hours [165 registrants x 20 hours per registrant]

Drafting and Updating Written Procedures for Compliance, and Maintaining Records Documenting Compliance for DCOs. This hourly burden arises from the time necessary for DCOs to revise and update records documenting compliance related to client clearing documentation.

Number of registrants: 15
Frequency of collection: as needed
Estimated number of annual responses per registrant: 1
Estimated aggregate number of annual responses: 15
Estimated annual hour burden per registrant: 20 hours
Estimated aggregate annual hour burden: 300 burden hours [15 registrants x 20 hours per registrant]

Drafting and Updating Trade Processing Procedures for FCMs, SDs, and MSPs. This hour burden arises from the time necessary to periodically revise and update the trade processing procedures required by the regulations.

Number of registrants: 165
Frequency of collection: as needed
Estimated number of annual responses per registrant: 1
Estimated aggregate number of annual responses: 165
Estimated annual hour burden per registrant: 20 hours
Estimated aggregate annual hour burden: 3,300 burden hours [165 registrants x 20 hours per registrant]

Drafting and Updating Trade Processing Procedures for DCOs. This hour burden arises from the time necessary to periodically revise update the trade processing procedures required by the regulations.

Number of registrants: 15

Frequency of collection: Initial drafting, updating as needed

Estimated number of annual responses per registrant: 1

Estimated aggregate number of annual responses: 15

Estimated annual hour burden per registrant: 20 hours

Estimated aggregate annual hour burden: 300 burden hours [15 registrants x 20 hours per registrant]

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.**

The information collection required by the regulations would not involve any capital or start-up capital or operations or maintenance costs as the Commission anticipates that SDs, MSPs, FCMs, and DCOs already maintain sufficient compliance personnel and systems for the regulatory recordkeeping that would be required.

- 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 regulations would 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.**

While the number of DCOs remains the same, at 15 registrants, as in 2020, the burden hour adjustment is due to a decrease in the number of SDs, MSPs, and FCMs from 168 to 165, resulting in 180 as the total number of respondents (from 183 in 2020). While the burden hours, at 40 hours per respondent, remains the same as in 2020, the renewal reflects the increase in hourly burden cost from \$100.00 to \$120.00, bringing the total annual respondent burden cost to \$864,000 ($\$120 \times 40 \text{ hrs/respondent} \times 180 \text{ respondents}$), an increase from \$732,000 in respondent burden cost in 2020.

- 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

Part 23 – Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants

OMB Collection File 3038-0092

Number of Registrants: 180

Estimated Average Burden Hours Per Registrant: 40

Estimated Aggregate Burden Hours: 7200

Estimated Annual Cost Per FCM, SD, or MSP: \$4,800

Estimated Annual Cost Per DCO: \$4,800

Estimated Aggregate Annual Cost: \$864,000

Frequency of Recordkeeping/Reporting: *See table below (daily, annually, or as needed)*

% of Responses Collected Electronically: 100%

Requirement	Estimated Number of Registrants Per Year	Frequency of Response	Number of Responses Per Registrant Annually	Aggregate Number of Responses Annually	Estimated Average Number of Hours Per Response	Estimated Annual Hour Burden Per Registrant	Estimated Aggregate Hour Burden	Estimated Annual Cost Per Registrant	Estimated Aggregate Annual Cost
Recordkeeping : Drafting and updating Written Procedures for Compliance, and Maintaining Records Documenting Compliance	180	Updating as needed	1	180	20 hours	20 hours	3600 hours	\$2,400	\$432,000
Recordkeeping : Drafting and Updating Trade Processing Procedures	180	Updating as needed	1	180	20 hours	20 hours	3600 hours	\$2,400	\$432,000
<u>TOTAL (per registrant):</u>						40 hours	7200 hours	\$4,800	\$864,000