

## SUPPORTING STATEMENT FOR INFORMATION COLLECTION

OMB CONTROL NUMBER 3038-0007

### REGULATION OF DOMESTIC EXCHANGE-TRADED OPTIONS

#### Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Commodity Futures Trading Commission (“Commission”) has promulgated Commission Regulations 33.7 and 33.8,<sup>1</sup> respectively, which require futures commission merchants (“FCMs”) and introducing brokers (“IBs”): (1) to provide retail (i.e., non-eligible contract participant)<sup>2</sup> customers with, and retain, standard risk disclosure statements concerning the risk of trading certain domestic exchange-traded commodity options;<sup>3</sup> and (2) to retain all related promotional material and the source of authority for information contained therein. These requirements help assure that these customers are not fraudulently induced to invest in these commodity options by persons who misrepresent the risks of such transactions. The recordkeeping requirements assist the Commission and the National Futures Association (“NFA”) in verifying registrants’ compliance with their disclosure obligations and ensuring that related promotional material is not fraudulent or misleading.

- 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 principal beneficiaries of the information required to be disclosed under this rule are the retail users of the domestic commodity option markets who benefit from the disclosure of relevant information. The disclosure and recordkeeping requirements are necessary to monitor and to verify compliance by FCMs and IBs with their obligations concerning disclosure to retail customers and promotional material relating to these commodity options.

- 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**

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<sup>1</sup> 17 CFR 33.7 and 33.8.

<sup>2</sup> Commission Regulation 33.7 does not require FCMs or IBs to provide the disclosure or obtain a related acknowledgment from institutional customers. See 17 CFR 33.7(a)(1). Commission Regulation 1.3 provides that “institutional customer” has the same meaning as “eligible contract participant” (“ECP”) as defined in section 1a(18) of the Commodity Exchange Act (“CEA”). Under the CEA, an ECP includes, for example, a financial institution, an insurance company, and a corporation with \$10 million in assets.

<sup>3</sup> See Commission Regulation 33.2(b). 17 CFR 33.2(b) (providing that Part 33 of the Commission’s Regulations applies to commodity option transactions that are options on contracts of sale of a commodity for future delivery except for commodity option transactions that are options on contracts of sale of a commodity for future delivery conducted or executed on or subject to the rules of a foreign board of trade).

**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 be performed in accordance with Commission regulation 1.31, which permits the use of electronic regulatory records.

**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 Commission has previously amended its risk disclosure rules in order to consolidate risk disclosure statements and thereby reduce duplicative disclosure requirements and ease administrative burdens on FCMs and IBs. See 58 Fed. Reg. 17495 (April 5, 1993); 59 Fed. Reg. 34376 (July 5, 1994). The risk disclosure rules were further amended to streamline disclosure burdens by eliminating the requirement that FCMs and IBs provide the mandated disclosure statement to categories of customers whose financial sophistication and knowledge would render the information contained in the statement duplicative. See 63 Fed. Reg. 8566 (February 20, 1998).

**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 risk disclosure rules do not have a significant economic impact on a substantial number of small entities. Certain IBs affected by these rules may be considered small entities. However, the disclosure requirements should not obligate any IB to change current practices.

**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.**

Users of the markets are the primary beneficiaries of the disclosure requirements. The rule only requires that the mandated statement be provided to a retail customer at the time the customer opens an account to trade certain domestic exchange-traded commodity options. Reduction in the disclosure obligation could result in many of these commodity option customers not having important information concerning the risks of investing in such commodity options before they so invest. If promotional material is not required to be retained so that it can be reviewed, fraudulent or misleading data could be provided to customers more readily.

**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 rules in question do not require the respondent to report any information to the Commission.

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

Respondents are not required to prepare any written responses within a specific period of time.

- **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;**

Under Commission Regulation 33.7(a)(1)(ii),<sup>4</sup> respondents are required to maintain in their records a signed acknowledgment from a retail customer that the customer received and understood the risk disclosure statement. In addition, FCMs and IBs are required to maintain records to demonstrate compliance with the disclosure and promotional material requirements.<sup>5</sup> They may also wish to maintain records demonstrating that their customers are ECPs and, thus, excluded from the applicable requirements.<sup>6</sup>

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, 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 a statistical survey.

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

The rules do not involve 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 any such pledges of confidentiality.

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<sup>4</sup> 17 CFR 33.7(a)(1)(ii).

<sup>5</sup> See Commission Regulation 33.7(a)(2) and 33.8. 17 CFR 33.7(a)(2) and 33.8.

<sup>6</sup> Brokers do, in fact, often protect themselves by requiring customers to certify that a customer is an ECP.

- **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 information to the Commission. Commission Rule 1.31 requires that all regulatory records be open to inspection by any representative of the Commission or the United States Department of Justice. 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.**

A *Notice of Intent to Extend Information Collection 3038-0007* was published in the *Federal Register* on August 12, 2024 ("Notice"). See 89 Fed. Reg.65606. The Notice requested comment on this information collection prior to submission to OMB. 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.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.**

This question does not apply.

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.**

None of the regulations require the giving of sensitive information, as that term is used in Question 11.

**12. Provide estimates of the hour burden of the collection of information. The Statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A.

As discussed above, Commission Regulation 33.7 requires respondents to provide a Commission-mandated statement to certain customers and then to retain the disclosure and a signed acknowledgment received from these customers. These tasks can be performed by clerical employees. If a customer has questions concerning the statement, a professional level employee may need to respond.

**Third-party Disclosure Burden:** There are 983 respondents subject to Commission Regulation 33.7 (risk disclosure). As described in Attachment A, the total estimated hours burden for all respondents is 9,044 (rounded) annual third-party disclosure hours.

**Recordkeeping Burden:** There are 983 respondents subject to Commission Regulation 33.8 (retention of promotional material). As described in Attachment A, the total estimated hours burden for all respondents is 24,575 annual recordkeeping hours.

Accordingly, the Commission estimates that the estimated total number of hours of annual burden on respondents would be 33,619 (rounded).

The annualized costs in Attachment A were determined using an average salary of \$30.00 per hour. The Commission believes that this is an appropriate salary estimate for purposes of these regulations. This salary estimate is based upon May 2023 Bureau of Labor Statistics' findings of National Occupational Employment and Wage Estimates, United States<sup>7</sup>, including the mean hourly wage of an employee under occupation codes 43-3031 (Bookkeeping, Accounting, and Auditing Clerks), 43-4051 (Customer Service Representative), 43-9061 (Office Clerks, General), and 43-4071 (File Clerks), in each case, that is employed by the "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" industry which is \$23.84, \$20.92, \$20.94, and \$19.58, respectively. The Commission created a blended average of the foregoing data and then increased its hourly wage estimate to \$30.00 in recognition of the fact that some respondents may be large financial institutions whose employees' salaries may exceed the mean wage.

**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.**

<sup>7</sup> See [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).

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.**

This collection does not impose any additional costs on 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.**

As a result of industry consolidation and other factors, the current number of CFTC registrants who are FCMs or IBs (and, thus, the estimated number of respondents subject to this collection) has decreased from 1,112 to 983. The total number of FCM respondents increased from 61 to 62 but the total number of IB respondents decreased from 1,051 to 921, yielding an overall decrease in the total number of respondents. The estimated burden hours per registrant has not changed.

Accordingly, as shown in Attachment A, the reduction in the estimated number of respondents yields a reduction in estimated burden hours for this collection from 38,030 to 33,619 (rounded).

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<sup>8</sup>**

**#3038-0007 – REGULATION OF DOMESTIC EXCHANGE – TRADED COMMODITY OPTIONS**

<b>Regulation</b>	<b>1. Estimated number of respondents or recordkeepers per year</b>	<b>2. Reports annually by each respondent</b>	<b>3. Total annual responses (1×2)</b>	<b>4. Estimated average number of hours per response</b>	<b>5. Estimated Average Cost Per Response</b>	<b>6. Estimated total number of hours of annual burden in fiscal year (3×4) (rounded)</b>	<b>7. Total Annual Burden Cost (3×5)</b>
<b>Third-party Disclosure:</b>							
33.7 (Risk disclosure)	983	115	113,045	0.08	\$2.40	9,044	\$271,308
<b>Recordkeeping:</b>							
33.8 (Retention of promotional material)	983	1	983	25.00	\$750.00	24,575	\$737,250
<b>Grand total (third-party disclosure and recordkeeping)</b>			<b>114,028</b>			<b>33,619</b>	<b>\$1,008,558</b>

<sup>8</sup> The assumption is that a total of 983 respondents (62 FCMs and 921 IB respondents) will open, on average, 115 new accounts per year.