

## SUPPORTING STATEMENT FOR REVISED INFORMATION COLLECTION

OMB CONTROL NUMBER 3038-0093

### PART 40, PROVISIONS COMMON TO REGISTERED ENTITIES

#### 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 Commission is revising control number 3038-0093 in connection with final amendments to the Commission's regulations under Part 40 (including regulations 40.2, 40.3, 40.4, 40.5, 40.6 and 40.10). Part 40 provides procedures for the submission of rules and rule amendments by registered entities, including designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. It establishes the procedures for submitting the "written certification" required by Section 5c of the Commodity Exchange Act ("CEA") in connection with a product or rule certification.

The Commission is amending the Part 40 regulations to clarify, simplify, and enhance their utility for market participants and the Commission. Commission staff has observed a trend that some of the submissions under part 40 tend not to include sufficient information. Accordingly, the Commission is adding language clarifying that the submissions must be "complete."

These amendments are likely to modestly increase the PRA reporting burden for registered entities, although some registered entities are already providing the information required under the final rule. While the amendments are not intended to expand or otherwise alter the scope of the current regulation, the Commission conservatively estimates some reporting entities may expend some additional time cognizable under the PRA to ensure the completeness of their submissions.

Regulation 40.10 also contains submission procedures for certain risk-related rules proposed by a systemically important derivatives clearing organization ("SIDCO"). The SIDCO regulations require, among other things, 60-days advance notice of proposed rules or rule amendments that may materially affect the nature or level of risks presented by the SIDCO. The SIDCO reporting burden will not be impacted by the amendments.

**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.**

For new products, registered entities currently must submit information complying with either § 40.2 (self-certification) or § 40.3 (voluntary submission for Commission approval). The Commission is adding language clarifying that the § 40.2 and § 40.3 submissions must be “complete.”

The requested information should help achieve improved regulatory effectiveness of the self-certification processes by resulting in all (rather than just some) registered entities explaining how and why their products, rules, and rule amendments comply with the Act and Commission’s regulations, thereby enabling the Commission to more effectively complete its analysis of compliance and allowing market participants to understand the products being listed for trading and the rules being submitted.

**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 Commission is committed to utilizing technology in order to reduce reporting burdens for respondents. The Commission requires all submissions under Part 40 to be submitted to the Commission electronically via a web portal on the Commission’s website at [cftc.gov](http://cftc.gov). The Commission intends to continue its practice of publishing all incoming submissions on its website, which expedites public review of submissions. The Commission anticipates that 100% of the collection of information will be submitted 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.**

The CEA and regulations require registered entities to submit certain information (product terms and conditions, explanations of the cash market and other aspects of the product and its compliance with applicable law, rule changes and explanations of the operation, purpose and effect of such changes, and notices of certain risk management rules) that is not available from any other source and generally is specific to the product or rule and to the registered entity.

**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 involve small businesses or other small entities. The Commission has previously determined that the registered entities subject to Part 40, including designated contract markets, swap execution facilities, derivatives clearing

organizations, and swap data repositories, are not small entities for purposes of the Regulatory Flexibility Act.

**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.**

The Commission's Part 40 regulations do not require the submission of information on a periodic basis. Rather, submissions are required only at such time that registered entities seek to list new products or adopt new rules or rule amendments. The frequency of the required submissions depends on the frequency that registered entities seek to take one or more actions that require a filing with the Commission. Without contemporaneous submission of the information, the Commission could not adequately review the product or rule prior to its becoming effective at the registered entity, which would undermine the Commission's statutory oversight.

**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 does not apply.

- **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;**

This does not apply.

- **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 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;**

This does not apply.

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

This does not apply.

- **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 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 final rule does not involve any specific pledge of confidentiality with respect to the part 40 submissions. The Commission protects sensitive information according to the Freedom of Information Act and 17 CFR part 145, “Commission Records and Information.” In addition, the Commission fully complies with section 8(a) 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.”

- 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.**

On September 6, 2023, the Commission published in the Federal Register a Notice of Proposed Rulemaking seeking comment on all aspects of the proposed rules, including the proposed information collection requirements and accompanying burden estimates. *See* Provisions Common to Registered Entities, 88 FR 61432 (Sep. 6, 2023).

The Commission received two comments on its burden analysis under the PRA in the proposal.<sup>1</sup> First, A16z noted an apparent inconsistency between the cost-benefit considerations (“CBC”) and PRA analyses in the NPRM, because the PRA recognized a cost associated with the “completeness” requirement for product and rule submissions under part 40, but the CBC analysis did not. Because A16z did not make any specific comments about the PRA estimates, but only noted an apparent inconsistency with the CBC, the Commission has not made any

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<sup>1</sup> A16z at 7-8; Coinbase at 8.

changes to its PRA estimates in response to the A16z comment.<sup>2</sup> Accordingly, the Commission is retaining its prior burden estimates and has not made any changes to its PRA estimates in response to the A16z comment.

Second, Coinbase asserted that the proposed revision to § 40.2 “could significantly expand a DCM’s regulatory costs for preparing certified product filings.”<sup>3</sup> Although the commenter did not expressly reference the Commission’s PRA burden estimates, the Commission addressed this comment in the preamble of the Final Rule as part of its PRA burden analysis. As explained in the Final Rule, the Commission does not anticipate that the new requirement for “complete” § 40.2 submissions will constitute a significant expansion in regulatory costs because registered entities, through their due diligence in the regular course of business, will have already collected the information that they are expected to provide in their §40.2 filings. Additionally, the new submissions do not necessarily need to be lengthy. Thus, the Commission continues to estimate an increase of one burden hour per §§ 40.2/40.3 product filing, averaged across all filers.

**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.**

The Commission maintains regular contact with regulated entities.

**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.**

This does not apply.

**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 Commission has neither considered nor made any payment or gift to a respondent.

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<sup>2</sup> As discussed in the Preamble to the Final Rule, the amendments clarify the Commission’s expectations for the content of submissions, which some registered entities had not been meeting in their recent filings. Although the Commission views the amendments as changes that clarify existing filing requirements rather than imposing new requirements in the CBC analysis, for practical purposes relative to the PRA, the amendments may increase some registered entities’ reporting burden compared to their current filing practices. The A16z comment regarding the relationship between the PRA burden estimate and the CBC cost estimate is addressed further in the CBC in the Preamble to the Final Rule.

<sup>3</sup> Coinbase at 8, 11.

**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.**

The final regulations covered by this collection do not require the giving of sensitive information, as that term is used in Question 11.

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

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of 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.

*Burden Estimates*

Product Submissions (§§ 40.2 and 40.3)

As part of the Final Rule, the Commission is revising its regulations to require that respondents that provide product submission to the Commission under §§ 40.2 and 40.3 include “complete” information. While this “completeness” requirement is not intended to expand or otherwise alter the scope of the explanation or analysis required in the current regulation, the Commission conservatively estimates some reporting entities may expend some additional time to ensure the completeness of their submissions. Accordingly, the Commission is increasing its estimate of the average time per response under §§ 40.2(a)(3)(v) and 40.3(a)(4) by an additional 1 hour (for a new total of 22 hours, up from the previous estimate of 21 hours). The number of respondents remains 70. Accordingly, as shown in Attachment A, the aggregate annual estimate for the reporting burden associated with product submissions (§§ 40.2 and 40.3), as amended by the final rules, is as follows:

*Estimated number of respondents: 70*

*Estimated number of reports per respondent: 12<sup>4</sup>*

*Average number of hours per report: 22<sup>5</sup>*

*Estimated gross annual reporting burden (hours): 18,480<sup>6</sup>*

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<sup>4</sup> The 3-year average of total responses for §§ 40.2 and 40.3 submissions combined was 848 responses, calculated by taking the annual total submissions received under §§ 40.2 and 40.3 combined from all entities and averaging them for the years of 2020, 2021 and 2022. The estimated number of reports per respondent is calculated as 848 responses divided by 70 respondents (848 responses / 70 respondents = 12 responses per respondent).

<sup>5</sup> The aggregate number of hours per report for §§ 40.2 and 40.3 adds 1 hour to the existing burden estimate of 21 hours, for a total of 22.

<sup>6</sup> The estimated gross annual reporting burden (hours) is calculated by multiplying the estimated number of respondents times the estimated number of reports per respondent times the average number of hours per report (70 respondents × 12 reports per respondent × 22 hours per report = 18,480 hours)

### Rule Submissions (§§ 40.5 and 40.6)

As part of the Final Rule, the Commission is revising its regulations to require that respondents that provide product submission to the Commission under §§ 40.6 include “complete” information to enable the Commission to perform its analysis of rule submissions. The Commission estimates that, because of this completeness requirement, some reporting entities may expend an additional 0.5 hours to ensure the completeness of their submissions (this increase would average out to 2.5 hours per response, up from the previous estimate of 2 hours per response). Accordingly, as shown in Attachment A, the aggregate annual estimate for the reporting burden associated with rule submissions (§ 40.6), as amended by the final rules, is as follows:

*Estimated number of respondents: 70<sup>7</sup>*

*Estimated number of reports per respondent: 20<sup>8</sup>*

*Average number of hours per report: 2.5<sup>9</sup>*

*Estimated gross annual reporting burden (hours): 3,500<sup>10</sup>*

### SIDCO Submissions (§ 40.10)

The Commission is retaining its existing burden estimates for SIDCO submissions under § 40.10 because the burden for SIDCO submissions is unaffected by the amendments.

### *Labor Cost Estimates*

In calculating the accompanying labor cost estimates shown in Attachment A, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor’s Bureau of Labor Statistics (“BLS”). Commission staff arrived at an hourly rate of \$112 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2023) under NAICS 523000 multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted

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<sup>7</sup> The estimated number of 70 respondents includes 16 active DCMs, 23 registered SEFs, 15 registered DCOs, 5 provisionally registered SDRs, plus pending applications for those entities.

<sup>8</sup> The amendment increases the burden only for § 40.6 filings (and not for § 40.5 filings). However, the Commission aggregates §§ 40.5 and 40.6 for PRA purposes. The 3-year average of total responses for §§ 40.5 and 40.6 submissions combined was 1,412 responses, calculated by taking the annual total submissions received under §§ 40.5 and 40.6 combined from all entities and averaging them for the years of 2020, 2021 and 2022. The estimated number of reports per respondent is calculated as 1,412 responses divided by 70 respondents (1,412 responses/70 respondents = 20 responses per respondent).

<sup>9</sup> The aggregate number of hours per report for §§ 40.5 and 40.6 adds 0.5 hours to the existing burden of 2 hours per report, for a total of 2.5.

<sup>10</sup> The estimated gross annual reporting burden (hours) is calculated by multiplying the estimated number of respondents times the estimated number of reports per respondent times the average number of hours per report (70 respondents × 20 reports per respondent × 2.5 hours per report = 3,500 hours).

national average of mean hourly wages for the following occupations (and their relative weight): “compliance officer – industry: securities, commodity contracts, and other financial investment and related activities (13-1041)” (50%); and “lawyer – legal services (23-1101)” (50%). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

**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.**

There are no capital, start-up, or maintenance costs associated with the final regulations. The Commission anticipates that respondents will leverage existing systems in complying with the final regulations.

- 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 final regulations will 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.**

The final rules would amend the Part 40 regulations that provide procedures for the submission of new products, rules and rule amendments by registered entities, including designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. These changes would increase information submission requirements for the product and rule submissions to ensure that Commission staff receive the information necessary to assess whether new rules and products, and amendments to existing rules and product terms and conditions, comply with the CEA and Commission regulations.

As described in Attachment A, the proposal would result in a new total of 22,080 burden hours (this represents an increase of 1,540 burden hours from the currently approved total of 20,540 burden hours).

- 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.**

No exceptions exist.

## Attachment A

### Estimated Annual Hour and Cost Burden of the Collection of Information

#### IC: Provisions Common to Registered Entities (REVISED)

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent <sup>11</sup>	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 × 4)	6. Estimated Average Burden Hour Cost <sup>12</sup>	7. Total Average Hour Burden Cost Per Respondent (5 × 6)	8. Total Annual Responses <sup>13</sup>	9. Total Annual Number of Burden Hours (2 × 5)	10. Total Annual Burden Hour Cost of Responses (2 × 7)
§§ 40.2 and 40.3 (Products) (REVISED)	70	12	22	264	\$112	\$29,568	848	18,480	\$2,069,7
§§ 40.5 and 40.6 (Rules) (REVISED)	70	20	2.5	50	\$112	\$5,600	1,412	3,500	\$392,0
§ 40.10 (SIDCO) (UNCHANGED)	2	1	50	50	\$112	\$5,600	2	100	\$11,20
<b>New Totals</b>	<b>70<sup>14</sup></b>						<b>2,262</b>	<b>22,080</b>	<b>\$2,472,5</b>

<sup>11</sup> The totals for estimated numbers of reports by respondent per year are rounded. These estimates are derived by dividing the total number of responses in Column 8 (based on an average of actual filings submitted to the Commission over the past three years) by the total number of respondents shown in Column 2.

<sup>12</sup> For §§ 40.2, 40.3, 40.5, 40.6, and 40.10, the Commission is providing a blended rate using estimated industry specific wages for Compliance Officer and Lawyers multiplied by 1.3 to account for overhead and other benefits using data from 2023. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates with data collected from employers in the securities, commodity contracts, and other financial investments and related activities (NAICS 523000) provides that the mean hourly wage for a compliance officer is \$45.47 and lawyer is \$126.97. The average of those wages is \$86.22, when adjusted by 1.3 multiplier noted above results in the average hourly wage of \$112. See May 2023 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000 - Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at: [https://www.bls.gov/oes/current/naics3\\_523000.htm](https://www.bls.gov/oes/current/naics3_523000.htm).

<sup>13</sup> The Total Annual Responses in column 8 were obtained by querying the Commission's Portal for the past three years of filings, which were averaged for an annual estimate.

<sup>14</sup> The total number of respondents for the Information Collection is 70. A subset of 2 respondents file reports under § 40.10.