SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

Part 41 – Relating to Security Futures Products

OMB CONTROL NUMBER 3038-0059

A. 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" or "Act"), 7 U.S.C. § 6d(c), requires the Commodity Futures Trading Commission ("CFTC" or "Commission") to consult with the Securities and Exchange Commission ("SEC") and issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to firms that are fully registered with the SEC as brokers or dealers and the CFTC as futures commission merchants ("FCMs") involving provisions of the CEA that pertain to the treatment of customer funds. The CFTC, jointly with the SEC, issued regulations requiring such dually-registered firms to make choices as to how its customers' transactions in security futures products ("SFP") will be treated, either as securities transactions held in a securities account or as futures transactions held in a futures account. How an account is treated is important in the unlikely event of the insolvency of the firm. Only securities accounts receive insurance protection under provisions of the Securities Investor Protection Act. By contrast, only futures accounts are subject to the protections provided by the segregation requirements of the CEA.

Commission regulation 41.3 establishes procedures for FCMs or introducing brokers ("IBs") registered in accordance with the notice registration provisions of Commission regulation 3.10, or any broker or dealer exempt from floor broker or floor trader registration pursuant to section 4f(a)(3) of the Act, to apply to the CFTC for an order pursuant to section 4f(a)(4)(B) of the Act granting an exemption from certain provisions of the Act or the CFTC's regulations.

Commission regulation 41.41, in relevant part, sets forth recordkeeping and third-party disclosure requirements that FCMs must fulfill with respect to SFP accounts. For instance, Commission regulation 41.41(b) requires that FCMs, prior to accepting the first order for an SFP from or on behalf of a customer, furnish such customer with a disclosure document containing the information enumerated in the regulation. Such information is necessary to ensure that SFP accounts are handled appropriately, and that each customer is informed of the protections available to SFP accounts and of the manner in which such customer's SFP account is being protected.

Section 5c of the CEA, as amended by section 745 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), provides the procedures for the submission of rules

and rule amendments by designated contract markets ("DCMs"), swap execution facilities, derivatives clearing organizations ("DCOs"), and swap data repositories.

Section 5c(c)(1) of the Act, as amended by Dodd-Frank, reads as follows:

> A registered entity may elect to list for trading or accept for clearing any new contract**,** or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission . . . a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act) (emphasis added).

Commission regulations 41.23 and 41.24 establish the procedures for submitting the "written certification" required by section 5c of the Act with respect to SFPs. In connection with the product or rule certification, the DCM or DCO must provide a concise explanation and analysis of the submission and its compliance with statutory provisions of the Act.

Accordingly, new rules or rule amendments must be accompanied by concise explanations and analyses of the purposes, operations, and effects of the submissions. This information may be submitted as part of the same submission containing the statutorily required "written certification."

The explanation and analysis is necessary for administrative purposes. Without prompt receipt of supporting information, staff must expend significant resources and time to replicate an existing analysis or to otherwise independently establish a product or rule's compliance with applicable law.

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.

Commission regulation 41.3 provides the procedures for FCMs, IBs, and certain brokers or dealers to follow in applying to the Commission for an exemptive order pursuant to section 4f(a)(4)(B) of the Act. Information that must be filed with the Commission includes an explanation of the facts and circumstances under which the applicant believes the exemptive relief is necessary or appropriate and in the public interest as well as an explanation about whether the requested relief is consistent with the protection of investors. This information is necessary in order for the Commission to make an informed decision with respect granting or denying the request.

For new SFPs, a DCM must submit information complying with § 41.23 as follows:

- § 41.23(a)(1) – (a)(6) generally requires a filing that: (1) is labeled "Listing of Security Futures Product;" (2) a copy of the product's rules, including its terms and conditions; (3) the certifications required by § 41.22; (4) a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25; (5) a certification that the SFP complies with the Act and rules thereunder; and

(6) a copy of the submission cover sheet in accordance with the instructions in appendix D of Part 40.

- § 41.23(b) permits a DCM to request that the Commission approve any SFP under the procedures of § 40.5 (a concise explanation and analysis of the new product and its compliance with applicable law).

These regulations are necessary to the Commission's administration of the Act, which requires new contracts to, among other things, not be susceptible to manipulation and have specified position limits or accountability levels. Without explanations and analyses of new submissions, the Commission cannot effectively exercise its oversight responsibilities under the Act.

For general rules and rules implementing changes to the terms and conditions of products, a DCM or DCO must comply with § 41.24 as follows:

- Section 41.24(a)(1) – (a)(5) generally requires a filing that: (1) is labeled "Security Futures Product Rule Submission;" (2) a copy of the new rule or rule amendment; (3) a certification that the DCM or DCO has filed the rule or rule amendment with the SEC; (4) includes certifications required to be filed with the Commission pursuant to § 40.6, including a certification that the SFP complies with the Act and rules thereunder; and (5) a copy of the submission cover sheet in accordance with the instructions in appendix D of Part 40.

- Section 40.24(b) generally permits a DCM or DCO to request that the Commission approve any rule or proposed rule or rule amendment relating to the SFP under the procedures of § 40.5 (a concise explanation of the rule or rule amendment and its compliance with the applicable law).

Relatedly, §§ 41.27(c) and 41.27(e) require a DCM to file rule submissions with respect to dual trading with the Commission in accordance with the procedures of §§ 40.5 and 40.6. Moreover, § 41.49 requires a DCM to file rule changes with the Commission regarding customer margin for SFPs with the Commission.

All of the regulations pertaining to rule submissions are necessary to the Commission's administration of the Act. The requested information is essential to the staff's review of submissions and the Commission's oversight of each DCM's self-regulatory actions. Staff generally conducts a due diligence review of rule submissions and makes an independent determination concerning the DCM's compliance with the Act and regulations thereunder.

Next, a DCM has the discretion to request confidential treatment pursuant to §§ 41.23(a)(7) and 41.24(a)(6) for rule and product submissions. These requests are analyzed by Commission staff and form the basis in determining whether a DCM's request confidential treatment should be granted or denied.

Regulation 41.31 provides the procedures for any board of trade that is a national securities exchange, national securities association, or an alternative trading system, and that seeks to operate as a DCM in SFPs to notify the Commission. This promotes regulatory certainty, assists

in ensuring appropriate oversight of SFPs, and encourages less duplicative and more effective regulation by the Commission and the SEC.

Finally, § 41.41 requires FCMs to maintain policies and procedures and provide disclosures to customers. These policies or procedures are used by FCMs to determine whether and when a customer SFP is placed in a futures account and/or a securities account. The FCM disclosures to customers ensure that the customer is provided information regarding its account type, the protections provided by its account type, whether it has the choice to select or change its account type, and records of each change or request to change the account type.

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's Part 41 regulations permit information to be submitted electronically. Additionally, the Commission intends to continue its practice of publishing all incoming rule and product submissions on its website. The Commission also intends to facilitate submissions and public comment on such submissions through the Commission's website.

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 regulations require a DCM to submit certain information such as product terms and conditions, rule changes (DCMs or DCOs) and explanations of the operation, and purpose and effect of such changes that is not available from any other source and generally is specific to the DCM or DCO.

The collection of information includes the potential submission of information from FCMs, IBs, and certain brokers or dealers, and the recordkeeping and furnishing of information to customers from FCMs. This applicable information would not have been previously submitted by the respondents to the Commission.

5. If the collection of information impacts small business or other small entities (Item 5 of OMB Form 83-I), describe the methods used to minimize burden.

This collection of information will not have a significant impact on a substantial number of 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.

The Commission's Part 41 regulations do not require the submission of information on a periodic basis. Rather, submissions are required only at such time that a DCM, FCM, IB, or certain broker or dealer seeks to take one or more actions that require a filing with the Commission.

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;**

A DCM is required to submit information to the Commission each time a new rule, rule amendment or product is adopted by the entity, or whenever a DCM seeks approval of a new rule, rule amendment or product.

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

Not applicable.

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

Not applicable.

- **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**

Commission regulation 1.31(b) expressly requires that books and records required to be kept by the CEA or Commission regulations be retained for certain specified periods. Other than with respect to oral communications, the shortest of these periods is five years from the date of creation.

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

Not applicable.

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

Not applicable.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

Not applicable.

- **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.**

In certain circumstances, a DCM must provide proprietary information in order for Commission staff to review rules and products for compliance with the Act and Commission regulations. A DCM may request confidential treatment pursuant to the procedures of regulations 40.8 and 145.9. Similarly, an applicant for an exemption under § 41.3 may submit confidential information in furtherance of its application. This information is necessary for the Commission to be able to consider whether to grant the requested exemption. The Commission has promulgated regulations to protect the confidentiality of any information collected from respondents, which are set forth in 17 CFR Parts 145 and 147.

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 on the extension of information collection requirements described herein in *Agency Information Collection Activities: Notice of Intent to Extend Collection 3038-0059, Part 41, Relating to Security Futures Products*, 91 FR 53610 (Aug. 19, 2026). No relevant comments were received.

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

Not applicable.

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

The Commission does not provide respondents with an assurance of confidentiality. However, the Commission must comply with section 8(a)(1) of the Act, which strictly prohibits the Commission, unless specifically authorized by the 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." Commission regulations 41.23(a)(7) and 41.24(a)(6) allow DCMs to request confidential treatment of information submitted pursuant to the procedures of §§ 40.8 and 145.9. In addition, 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.

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 this 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 hour 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. The Commission estimates that approximately 10 respondents will file a total of 670 responses annually with a total burden of 603 hours.

Total costs are estimated to be $61,944 (using a $102.69 per hour hourly wage estimate). The annualized costs per affected registrant and in the aggregate were determined using an average salary of $102.69 per hour. The Commission believes that this is an appropriate salary estimate for purposes of these regulations.

In support of this determination, the Commission notes that the salary estimate is based upon May 2025 National Occupational Employment and Wage Estimates, United States,[1] including the mean hourly wage of an employee under occupation code 23-1011, "Lawyers," that is employed by the "Securities, Commodity Contracts, and Other Financial Investments and Related Activities Industry," which is $131.91; the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," in the same industry, which is $124.46; and the mean hourly wage of an employee under occupation code 13-1041, "Compliance Officers" in the same industry, which is $51.71.

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 cost 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 startup and operational costs associated with this collection.

14. Provide estimates of the annualized cost 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

[1] *See* May 2025 National Industry-Specific Occupational Employment Wage and Estimates, NAIC 523000 – Securities, Commodity Contracts, and Other Financial Investments and Related Activities, Occupational Employment and Wage Statistics, U.S. Bureau of Labor Statistics, https://data.bls.gov/oes/#/industry/523000/2025.

incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

This information collection does not result in any annualized 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 Commission is updating its estimates regarding the respondents subject to the information collection requirements covered by this collection. The Commission estimates that there are eight FCMs subject to the information collection requirements associated with Part 41 of the Commission's rules. For DCMs, the Commission is increasing its estimate from one to two DCMs that will be subject to the requirements to make product and rule submissions pursuant to Part 41. The Commission has increased its estimate of the total annual responses from all respondents from 521 to 670 responses and has updated the burden hour estimates based on the Commission's experience with reporting during the life of the collection. Based on these changes, the Commission estimates that the overall hours burden estimate for this collection will be increased from 467 to 603 total annual burden hours, as described further in Attachment A.

16. For collections 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.

Not applicable.

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.

Not applicable.

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

Not applicable.

Attachment A

Regulation	Estimated # of Registrants Per Year	Type	Annual Responses Per Registrant	Total # Annual Responses (Rounded)	Estimated Average Hours Per Response (Rounded)	Estimated Total Annual Burden per Fiscal Year (Rounded)	Annual Burden Cost ($102.69/hr)
Registration							
41.3 Registration	1	FCMs	1	1	25	25	$2,567
41.31 (Notice Designation Requirements)	1	DCM	1	1	5	5	$513
41.33 (Applications for Exemptive Orders)	1	DCM	1	1	40	40	$4,108
Reporting							
41.23(a)(1)-(6) and 41.23(b) (Listing of Security Futures Products for Trading)	2	DCM	60	120	2	240	$24,646
41.24(a)(1)-(5) and 41.24(b) (Rule Amendments to Security Futures Products)	2	DCM	6	12	2	24	$2,465
41.23(a)(7) and 41.24(a)(6) (request for confidential treatment)	2	DCM	1	2	2	4	$411
41.27(c) Reporting (Filing Rules for Prohibiting Dual Trading)	2	DCM	1	2	2	4	$411
41.27(e) Reporting (Filing Rule exceptions for Prohibiting Dual Trading)	2	DCM	1	2	2	4	$411
41.32 (Continuing Obligations)	2	DCM	20	40	4	160	$16,431
41.49 (Filing Proposed Margin Rule Changes with the Commission)	2	DCM	0.3	0.6	2	1.2	$123
Recordkeeping							
41.41(a)(2) and 41.41(d) Recordkeeping	8	FCMs	1	8	4	32	$3,286
41.41(c)(1) Recordkeeping	8	FCMs	20	160	0.1	16	$1,643
Third-Party Disclosure							
41.41(b) Third-party disclosure	8	FCMs	40	320	0.15	48	$4,929
Total	10		153.3	669.6	90.25	603.2	$61,944.62

Collection 3038-0059: Total Estimated Burden

Estimated number of respondents/affected entities: 10

Estimated number of annual responses: 670 (rounded)

Estimated average burden hours per respondent: 60 hours (rounded)

Estimated total annual burden hours: 603

Frequency of collection: On occasion

There are no capital costs or operating and maintenance costs associated with this collection.