

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0007

### 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 established minimum disclosure requirements to ensure that retail customers of futures commission merchants (“FCMs”) and introducing brokers (“IBs”) are fully aware of the nature and risks of domestic commodity options trading. The requirement to alert retail customers to these inherent risks helps assure that these customers are not fraudulently induced to invest in commodity options by persons who misrepresent the risks of such transactions. The recordkeeping requirements under these disclosure rules assist the Commission and the National Futures Association (“NFA”) in verifying registrants’ compliance with their disclosure obligations and their obligations to prepare promotional material that is not fraudulent or misleading. FCMs and IBs are not required to provide the disclosure statement to certain categories of customers who are financially sophisticated and thus would generally be aware of any information contained in the disclosure statement. The disclosure and recordkeeping requirements are necessary to monitor and to verify compliance by FCMs and IBs with their obligations concerning disclosure and promotional material.

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 rules do not apply the disclosure requirement to certain categories of financially sophisticated customers who would generally be aware of the information contained in such statements and thus for whom the information would be duplicative. The records required to be kept under the disclosure and promotional material rules are used by the Commission and NFA to monitor and to verify compliance by FCMs and IBs with their obligations concerning disclosure and promotional material.

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 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) and 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)). The Commission has also reviewed and simplified the designation process several times including changes that permit existing contract markets to “self-certify” new option contracts and begin trading the next day. See 66 Fed. Reg. 42255 (Aug. 10, 2001) and 67 Fed. Reg. 62873 (October 9, 2002). Option data is now reported together with futures data by FCMs under the Commission’s large trader reporting system, which is described in information collection 3038-0009. See 65 Fed. Reg. 14452 (March 17, 2000).

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 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 customer at the time the customer opens an option trading account. The rule further reduces any burden associated with the disclosure obligation by not requiring disclosure to certain categories of customers for whom the disclosed information is likely to be duplicative. Further reduction in the disclosure obligation could result in many commodity option customers not having important information concerning the risks of investing in domestic 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 more often than quarterly.

- 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.

- 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;

These disclosures are mandated by the CEA's general rulemaking authority found in sections 2(a)(12) and 8a(5), as well as section 3(b), which sets forth the purposes of the Act including "to protect all market participants from fraudulent or other abusive sales practices . . ." Therefore, the statutory basis for the disclosures is that they are necessary to protect customers as the statute requires.

Under the risk disclosure rule, 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.<sup>1</sup> The disclosure rules relieve respondents of the obligation of obtaining a signed acknowledgment from certain defined categories of financially sophisticated<sup>2</sup> customers. However, for customers covered by these disclosure requirements, respondents may wish to maintain records in order to demonstrate that a customer qualified for the relief discussed herein. Respondents are required to maintain records to demonstrate compliance with their disclosure and promotional material obligations. 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. Further, section 4(b) of the CEA provides "[t]he Commission may adopt rules . . . requiring . . . the disclosure of risks, [and] . . .

<sup>1</sup> Records may be kept "to demonstrate that a customer qualified for the relief discussed herein," i.e., keep records showing that the customer is an "Eligible Contract Participant" ("ECP") as defined in section 1a(18). This designation is set out in the statute—a self-executing determination. A customer is either an ECP or not. Brokers do, in fact, often protect themselves by requiring customers to certify that a customer is an ECP.

<sup>2</sup> "Financially sophisticated" customers are defined in section 1a(18) of the Act, which establishes a lengthy list of "eligible contract participants." The list of ECPs includes, for example, a financial institution, an insurance company, a corporation with \$10 million in assets, etc. The applicable regulatory references that lead to the ECP list are: (1) rule 1.55(f) states that a disclosure statement need not be provided to, and a signed acknowledgement need not be required from, "an 'institutional customer' as defined in § 1.3(g);" and (2) rule 1.3(g) defines "institutional customer" as having the same meaning as "eligible contract participant" as defined in the Act.

the keeping of books and records” by anybody who offers or sells contracts for future delivery on a Board of Trade. The Act cannot be enforced if registrants don’t keep records (or are free to destroy evidence of transactions).

- 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.

- 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 disclosure 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 June 7, 2018 (“Notice”). See 83 FR 26437 (2018). The Notice requested comment on this information collection prior to submission to OMB. No 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.

The risk disclosure rules require respondents to provide a Commission-mandated statement to certain customers and then to file 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.

Reporting burden: Regulation 33.7 (risk disclosure) respondents account for 11,702.40 annual reporting hours. These hours would be spread across 1,272 respondents.

Recordkeeping burden: Regulation 33.8 (retention of promotional material) account for 31,800 of annual recordkeeping hours. These hours would be spread across 1,272 respondents.

Accordingly, the Commission estimates that the estimated total number of hours of annual burden on respondents would be 43,502.40.

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.

In support of this determination, the Commission notes that the salary estimate is based upon May 2017 Bureau of Labor Statistics' findings of National Occupational Employment and Wage Estimates, United States<sup>3</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 \$23.34, \$21.48, \$17.29, and \$16.28, respectively. The Commission took the foregoing data and then increased its hourly wage estimate 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).

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<sup>3</sup> See [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).

- 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.

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 question does not apply.

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

The number of anticipated respondents has decreased based on the known numbers of CFTC registrants who are a futures commission merchant or an introducing broker. In addition, this collection previously referenced certain rules applicable to designated contract markets (“DCMs”) and new-product filings by such DCMs.

References to these rules were removed because there are separate collections that apply to these requirements.

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>4</sup>

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

<b>Regulation</b>	<b>Estimated number of respondents or recordkeepers per year</b>	<b>Reports annually by each respondent</b>	<b>Total annual responses</b>	<b>Estimated average number of hours per response</b>	<b>Estimated Average Cost Per Response</b>	<b>Estimated total number of hours of annual burden in fiscal year</b>	<b>Total Annual Burden Cost</b>
<b>Reporting:</b>							
33.7—(Risk disclosure)	1,272.00	115.00	146,280.00	0.08	\$2.40	11,702.40	\$351,072
<b>Recordkeeping:</b>							
33.8—(Retention of promotional material)	1,272.00	1.00	1,272.00	25.00	\$750.00	31,800.00	\$954,000
<b>Grand total (reporting and recordkeeping)</b>			<b>147,552.00</b>			<b>43,502.40</b>	<b>\$1,305,072</b>

<sup>4</sup> The assumption is that a total of 1272 respondents (65 FCMs or 1207 IB respondents) will open, on average, 115 new accounts per year.