

SUPPORTING STATEMENT FOR REVISED INFORMATION COLLECTIONS
OMB CONTROL NUMBER 3038-0101

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 738 of the Dodd-Frank Act amended Section 4(b) of the Commodity Exchange Act to provide that the Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade (FBOT) that wishes to provide the members of the FBOT or other participants located in the United States with direct access to the electronic trading and order matching system of the FBOT, including rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs. Accordingly, Part 48 of the Commission's regulations establishes a registration requirement and related registration procedures and conditions that apply to FBOTs that wish to provide direct access to their electronic trading and order matching systems. These FBOT registration requirements will help ensure that FBOTs meet certain regulatory standards sufficient to protect market integrity and provide consumer protection.

Estimated numbers of respondents and projected total annual responses and average number of hours per response are provided in Attachment A.

- 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 information received pursuant to Part 48 is analyzed by Commission staff and forms a basis for determining whether the registered FBOT demonstrates compliance with the conditions for registration or whether the Commission should take any action regarding lack of compliance with the conditions of registration.

- 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 information collection is required to be filed 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.**

None of the information collections are specifically duplicative. Each different type of information is needed given the purposes for which the data will be used.

5. **If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), describe the methods used to minimize burden.**

The collection of information does not impact 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.**

If the information required under this collection of information were not collected, the Commission could not implement the proposed registration scheme for FBOTs. Specifically, the Commission would not be able to administer a registration scheme without any information upon which the Commission could base a decision to register or deny an applicant. Under the registration scheme, FBOTs would not be able to make their contracts available in the US by direct access (as defined in the amended section 4(b)) unless they were designated as domestic exchanges (designated contract markets). Also, limitations on the scope of information the Commission could collect from an applicant would significantly decrease the ability of the Commission to work towards the above stated goals.

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 regulations require FBOTs with linked contracts to provide trade execution and audit trail information, large trader information, and aggregate trader position data on a daily basis. The regulations also provide for specific conditions on FBOTs who want to make swap contracts available for trading to U.S. entities via direct access. The FBOT would also have to send swap transaction data to a swap data repository (SDR), and agree to comply with any requirements imposed by the Commission with respect to cross market oversight issues, including surveillance, emergency actions and the monitoring of trading. Finally, the Commission may attach any other requirements upon notice to and opportunity for the FBOT to comment.

Finally, the regulations could potentially require FBOTs who make available contracts that are economically equivalent to those of U.S. registered entities to submit additional information to the Commission, if deemed necessary by the Commission.

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

In order for the Commission to adequately assess whether an FBOT is in compliance with a condition for registration, an FBOT might be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation.

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:

For enforcement purposes, Commission Regulation 1.31 requires that all books and records required to be kept by the Commodity Exchange Act or by the regulations be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five year period. All such books and records are open to inspection by any representative of the Commission or the U.S. Department of Justice.

These recordkeeping requirements would allow the Commission to have ready access to records that establish whether a FBOT is in compliance with conditions on registration. Further, the data records would ensure that the Commission could audit data records previously sent to the Commission.

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 statistical surveys.

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

The rules do not involve the 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 reporting rules do not directly involve any specific pledge of confidentiality regarding the collection of data (see answer to question 10).

requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 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.**

The Commission requested comments on the information collection by publication of a notice in the Federal Register on August 13, 2018 (83 FR 39989). The Commission did not receive comments.

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.

As part of the notice of proposed rulemaking (NPRM), the Commission requested public comment with regard to all matters associated with this rulemaking. The Commission plans to maintain contact with FBOTs on a continuous and ongoing basis to resolve issues associated with the collection of information and address concerns.

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.

No such circumstances are anticipated.

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.**

The Commission does not provide respondents with an assurance of confidentiality. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

11. **Provide additional justification for any questions of a sensitive nature, such as sexual**

behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This question does not apply.

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 83-1.

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 Commission is revising its most recent information burden collection estimate for FBOTs. The Commission is reducing its estimate of the total number of registered FBOTs that are required to make reports quarterly and annually from 27 to 23 and that will reduce one set of reporting burden from 972 to 846 hours. The Commission's estimate of the number of registered FBOTs that will permit swaps to be traded by direct access remains unchanged at two, thereby continuing an estimated total annual burden of 4160 hours. The Commission's estimate of the number of registered FBOTs that will permit a linked contract to be traded by direct access remains unchanged at two, thereby continuing an estimated total annual burden of 3624 hours. Thus the total annual aggregate burden hours on respondents are 8630 (846 + 4160 + 3624 = 8630).

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers

resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component.

The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.

If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The Commission believes that the relevant costs are addressed in the answers to question 12 and Attachment A.

- 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.**

The primary costs for reviewing and analyzing documents under the information collections are the salaries and benefits of the Commission's legal staff. The Commission estimates that one full-time attorney and one full-time legal assistant would be needed to review and analyze approximately 3 FBOT registration applications annually and to review and analyze the ongoing reporting obligations of the registered FBOTs. The average salary in 2013 for an attorney at the Commission is \$184,761.00 and \$92,155.00 for a legal assistant. In order to account for overhead and other benefits for each employee, the salaries have been multiplied by 1.3. Therefore, one attorney and one legal assistant would cost the Commission approximately

\$359,991 to review the 3 FBOT registration applications and the ongoing compliance obligations of the 23 registered FBOTs.

15. **Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.**

The Commission believes that the reasons for the relevant changes are addressed in the answers to question 12 and Attachment A.

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 83-1.**

No exceptions exist.

ATTACHMENT A

Registration of Foreign Boards of Trade

A. Reporting Requirements for Registered FBOTs

Regulation OMB Collection #3038-0101	Estimated #of Respon- dents Per Year	Reports Annually By Each Respondent	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burde Burden
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Regulation 48.8(b)(1)(i)(A) and(B) regarding trading volume information	23	4	92	6	552
Regulation 48.8(b)(1)(ii)(A)-(F) regarding material changes to registration information	23	1	23	2	46
Regulation 48.8(b)(1)(iii)(A)-(G) regarding annual submission of information	23	1	23	4	92
Regulation 48.9 regarding demonstration of compliance with conditions for registration	23	.25	5.75	8	64
Regulation 48.10 regarding the listing of additional futures and options contracts	23	1	23	4	92

Total reporting requirements (subpart A)	23		166.75		846
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B. Reporting Requirements for Registered FBOTs with a Linked Contract

Regulation OMB Collection #3038 0101	Estimated #of Respondents	Reports Annually By Each Respondent	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden
Regulation 48.8(c)(1)(ii)(C) (1)-(4) regarding notification of changes for linked contracts	2	2	4	3	12
Regulation 48.8(c)(1)(ii)(D) regarding large trader position information for linked contracts	2	250	500	2	1000
Regulation 48.8(c)(1)(ii)(E) regarding aggregate trader position information for linked contracts	2	250	500	2	1000
Regulation 48.8(c)(2)(i) regarding quarterly report for FBOTs with a linked contract	2	4	8	3	24
Regulation 48.8(c)(2)(ii) regarding trade execution and audit trail data for linked contracts	2	250	500	3	1500

Regulation 48.8(C)(2)(iii) regarding rules, rule amendments, and other notices for linked contracts	2	20	40	2	80
Regulation 48.8(c)(2)(iv) regarding disciplinary notices for FBOTs with linked contracts	2	2	4	2	8
Total reporting requirements (subpart B)	2	t	1556		3,624

C. Reporting Requirements for FBOTs that Make Swaps Available by Direct Access

Regulation OMB Collection #3038-0101	Estimated #of Respondents	Reports Annually By Each Respondent	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden
Regulation 48.8(a)(9)(i) regarding the reporting of swap transactions to a swaps data repository	2	250	500	8.32	4,160
Total reporting requirements (subpart C)	2		500		4,160
Total reporting requirements (includes subparts A, B, & C)			2,222.75		8,630