

CONSOLIDATED SUPPORTING STATEMENT FOR REVISED INFORMATION COLLECTIONS

3038-0052, Core Principles & Other Requirements for DCMs

3038-0074, Core Principles and Other Requirements for Swap Execution Facilities

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 or CFTC) is proposing amendments to its regulations for designated contract markets (DCMs) and swap execution facilities (SEFs) that would establish conflict of interest requirements with respect to market regulation functions as well as related governance standards. The proposed amendments include requirements for identifying, managing, and resolving conflicts of interest, and structural governance requirements to ensure that DCM and SEF governing bodies adequately incorporate an independent perspective. The proposed amendments also address additional governance and disciplinary requirements including, among other items: board of director composition and minimum fitness standards; limitations on the use and disclosure by employees and certain others of material non-public information; requirements relating to Chief Regulatory Officers, Chief Compliance Officers, and Regulatory Oversight Committees; and notification of certain changes in the ownership or corporate or organizational structure of a DCM or SEF. The proposed amendments would change parts 37 and 38 of the Commission regulations, as well as requiring new submissions under part 40. These new or modified reporting and recordkeeping requirements would require revision of OMB Control No. 3038-0052, “Core Principles & Other Requirements for DCMs;” OMB Control No. 3038-0074, “Core Principles and Other Requirements for Swap Execution Facilities;”² and OMB Control No. 3038-0093, “Part 40, Provisions Common to Registered Entities.”³

For the newly proposed burdens, 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 2022. 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 \$44.31 and lawyer is \$119.63. The average of those wages is \$81.97, when adjusted by 1.3 multiplier noted above results in the average hourly wage of \$106.56. See May 2022 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.

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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 requested information is essential to the Commission's oversight of DCM and SEF conflict of interest provisions. Staff will generally use the information submitted by the registered entity to monitor important information about compliance and governance, and to support the statutory objective of ensuring that conflicts of interest are appropriately mitigated.

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.

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 information to be submitted under the proposed rule is not duplicated by other sources or otherwise available to the Commission.

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 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 proposed amendments would in some cases require reports or recordkeeping on a periodic basis. The Commission believes that the proposed frequency of reporting is the minimum necessary to carry out the statutory objective of mitigating conflicts of interest.

In other cases, submissions are required only at such time that registered entities take certain actions, such as changing members of the Board of Director. 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 or internal recordkeeping, such as taking minutes or updating policies and procedures. Without contemporaneous submission of the information or recordkeeping, the Commission could not meet the objective of mitigating conflicts of interest.

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.

There is no 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.**

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.

The Commission sought comment from the public concerning the proposed amendments. A copy of the solicitation of public comment in the NPRM was published in the Federal Register at 88 FR 19646 (March 19, 2024). In addition, the Commission maintains regular contact with regulated entities.

- 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.

- 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 regulations covered by this collection do not require the provision of sensitive information, as that term is used in Question 10.

- 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. In calculating this cost estimate, 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 \$106.56 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 2022) under NAICS 523000 multiplied by 1.3 to account for overhead and other benefits. The Commission estimated appropriate wage rate is a weighted 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 operation and maintenance costs associated with the proposed regulations. The Commission anticipates that respondents will leverage existing systems in complying with the 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 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 Commission is proposing regulations that would include new reporting and recordkeeping requirements and would result in the revision of its burden hour estimates for Collections 3038-0052 (Core Principles & Other Requirements for DCMs) and 3038-0074 (Core Principles and Other Requirements for Swap Execution Facilities). The proposed amendments would result in the following changes to the affected collections:

	Current Burden Hours	Additional Burden Hours	New Burden Hour Totals
3038-0052	10,494	+ 2,396	12,890
3038-0074	7,740	+ 4,658	12,398

- 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

Collection 0038-0052 “Core Principles & Other Requirements for DCMs”

New IC: “Requirements for DCM Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation”

⁰ For the newly proposed burdens, 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 2022. 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 \$44.31 and lawyer is \$119.63. The average of those wages is \$81.97, when adjusted by 1.3 multiplier noted above results in the average hourly wage of \$106.56. See May 2022 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.

² For the previously approved estimates for SEFs under OMB Control No. 3038-0074, see ICR Reference No. 202201-3038-002, Conclusion Date Apr. 1, 2022, at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202201-3038-002.

³ OMB Control Number 3038-0093 currently has two Information Collections: Part 40, Provisions Common to Registered Entities; and Part 150, Position Limits. See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202102-3038-001.

Recordkeeping Burden Hours and Costs

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	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 ⁹	7. Total Average Hour Burden Cost Per Respondent (5 × 6)	8. Total Annual Responses (2×3)	9. Total Annual Number of Burden Hours (2 × 5)	10. Total Annual Burden Hour Cost of All Responses (2 × 7)
Fitness Documentation and Written Procedures (§ § 38.801(d) (one-time burden)	16	1	10	10	\$106.56	\$1065.60	16	160	\$17,049.60
Documentation of conflict-of-interest provisions (38.852(b)) (one-time burden)	16	4	1	4	\$106.56	\$426.24	64	64	\$6,819.84
Trading on material non-public information (§ 38.853)	16	1	10	10	\$106.56	\$1065.60	16	160	\$17,049.60

Annual Self-Assessment (§ 38.854(d))	16	1	25	25	\$106.56	\$2,664	16	400	\$42,624
ROC meeting minutes and documentation (§§38.857(f)(1)(iii) and 38.857(f)(2))	16	4	4	16	\$106.56	\$1,704.96	64	256	\$27,279.36
ROC recordkeeping (§ 38.857(g)(3))	16	4	2	8	\$106.56	\$852.48	64	128	\$13,639.68
Documentation of CCO/CRO conflicts of interest (§ 38.856(f))	16	1	4	4	\$106.56	\$426.24	16	64	\$6,819.84
Internal procedure updates (Part 38)	16	1	20	20	\$106.56	\$2,131.20	16	320	\$34,099.20
TOTALS	16						272	1,552	\$165,381.12

Reporting Burden Hours and Costs

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	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	7. Total Average Hour Burden Cost Per Respondent (5 × 6)	8. Total Annual Responses (2×3)	9. Total Annual Number of Burden Hours (2 × 5)	10. Total Annual Burden Hour Cost of All Responses (2 × 7)
Commission notice of Board membership changes (§38.854(f))	16	2	1	2	\$106.56	\$213.12	32	32	\$3,409.92
ROC annual report (§§ 38.857(g)(1) and (g)(2))	16	1	40	40	\$106.56	\$4,262.4	16	640	\$68,198.40
DCM CRO Appointment and Removal	16	0.5	0.5	0.25	\$106.56	\$26.64	8	4	\$426.24

Notification (§ 38.856(c))									
Reports of anticipated changes in ownership or corporate structure (§§ 38.5(c)(1) and (c)(2))	16	0.25	40	10	\$106.56	\$1065.60	4	160	\$17,049.60
Change in ownership/structure certification requirement (§ 38.5(c)(5))	16	0.25	2	0.50	\$106.56	\$53.28	4	8	\$852.48
TOTALS	16						64	844	\$89,936.64

Collection 3038-0074 “Core Principles and Other Requirements for Swap Execution Facilities”

New IC: “Requirements for SEFs Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation”

Recordkeeping Burden Hours and Costs

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	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	7. Total Average Hour Burden Cost Per Respondent (5 × 6)	8. Total Annual Responses (2×3)	9. Total Annual Number of Burden Hours (2 × 5)	10. Total Annual Burden Hour Cost of All Responses (2 × 7)
Fitness Documentation and Written Procedures (§ 37.207(d)) (one-time burden)	23	1	10	10	\$106.56	\$1065.60	23	230	\$24,508.80
Documentation of conflict-of-interest provisions (§ 37.1202(b)) (one-time burden)	23	4	1	4	\$106.56	\$426.24	92	92	\$9,803.52
Trading on material non-public information (§ 37.1203)	23	1	10	10	\$106.56	\$1065.60	23	230	\$24,508.80
Annual Self-Assessment (§ 37.1204(d))	23	1	25	25	\$106.56	\$2,664	23	575	\$61,272
ROC meeting minutes and documentation (§§ 37.1206(f)(1)(iii) and 37.1206(f)(2))	23	4	4	16	\$106.56	\$1,704.96	92	368	\$39,214.08

ROC recordkeeping (§ 37.1206(g)(3))	23	4	2	8	\$106.56	\$852.48	92	184	\$19,607.04
Documentation of CCO/CRO conflicts of interest (§ 37.1501(c))	23	1	4	4	\$106.56	\$426.24	23	92	\$9,803.52
Internal procedures updates (Part 37)	23	1	20	20	\$106.56	\$ 2,131.20	23	460	\$49,017.60
TOTALS	23						391	2,231	\$237,735.36

Reporting Burden Hours and Costs

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	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	7. Total Average Hour Burden Cost Per Respondent (5 × 6)	8. Total Annual Responses (2x3)	9. Total Annual Number of Burden Hours (2 × 5)	10. Total Annual Burden Hour Cost of All Responses (2 × 7)
Commission notice of Board membership changes (§37.1204(f))	23	2	1	2	\$106.56	\$213.12	46	46	\$4,901.76
ROC annual report §§ 37.1206(g)(1) and (g)(2))	23	1	40	40	\$106.56	\$4,262.4	23	920	\$68,198.40
Conflicts of interests reported in SEF Annual Compliance Report (§ 37.1501(d)(5))	23	1	53	53	\$106.56	\$5,647.68	23	1,219	\$129,896.64
Reports of anticipated changes in ownership or corporate structure (§§	23	0.25	40	10	\$106.56	\$1065.60	5.75	230	\$24,508.80

37.5(c)(1) and (c)(2)									
Change in ownership/structure certification requirement (§ 37.4(c)(4))	23	0.25	2	0.50	\$106.56	\$53.28	5.75	11.5	\$1,225.44
TOTALS	23						103.5	2,427 (rounded)	\$228,731.04