



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Extend Collection

3038-0062: Off-Exchange Foreign Currency Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collection of information provided for by Part 5 of the Commission’s regulations under the Commodity Exchange Act (“CEA”) relating to off-exchange foreign currency transactions.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by “OMB Control No. 3038-0062” by any of the following methods:

- The Agency’s web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.

- *Mail*: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- Hand Delivery/Courier: Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Gregory Scopino, Special Counsel, Division of Swap Dealer & Intermediary Oversight, Commodity Futures Trading Commission, (202) 418-5175; email: gscopino@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title: Off-Exchange Foreign Currency Transactions (OMB Control No. 3038-0062). This is a request for an extension of a currently approved information collection.

Abstract: Part 5 of the Commission's regulations under the CEA establishes rules applicable to retail foreign exchange dealers ("RFEDs"), futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity trading advisors ("CTAs"), and commodity pool operators ("CPOs") engaged in the offer and sale of off-exchange forex contracts to retail customers. Specifically:

- Regulation 5.5 requires RFEDs, FCMs, and IBs to distribute risk disclosure statements to new retail forex customers.
- Regulation 5.6 requires RFEDs and FCMs to report any failures to maintain the minimum capital required by Commission regulations.
- Regulation 5.8 requires RFEDs and FCMs to calculate their total retail forex obligation.
- Regulation 5.10 requires RFEDs to maintain and preserve certain risk assessment documentation.
- Regulation 5.11(a)(1) requires RFEDs to submit certain risk assessment documentation to the Commission within 60 days of the effective date of their registration.
- Regulation 5.11(a)(2) requires RFEDs to submit certain financial documentation to the Commission within 105 calendar days of the end of each fiscal year. RFEDs must also submit additional information, if requested, regarding affiliates' financial impact on an RFED's organizational structure.

- Regulation 5.12(a) requires RFED applicants to submit a Form 1-FR-FCM concurrently with their registration application.
- Regulation 5.12(b) requires registered RFEDs to file a Form 1-FR-FCM on a monthly and annual basis.
- Regulation 5.12(g) states that, in the event that an RFED cannot file its Form 1-FR-FCM for any period within the time specified in Regulation 5.12(b), the RFED may file an application for an extension of time with its self-regulatory organization.
- Regulation 5.13(a) requires RFEDs and FCMs to provide monthly account statements to their customers.
- Regulation 5.13(b) requires RFEDs and FCMs to provide confirmation statements to their customers within one business day after the execution of any retail forex or forex option transaction.
- Regulation 5.14 requires RFEDs and FCMs to maintain current ledgers of each transaction affecting its asset, liability, income, expense and capital accounts.
- Regulation 5.18(g) requires each RFED, FCM, CPO, CTA, and IB subject to part 5 to maintain a record of all communications received that give rise to possible violations of the Act, rules, regulations or orders thereunder related to their retail forex business.
- Regulation 5.18(i) requires each RFED and FCM to prepare and maintain on a quarterly basis a calculation of non-discretionary retail forex customer accounts open for any period of time during the quarter that were profitable, and the percentage of such accounts that were not profitable.

- Regulation 5.18(j) requires the CCO of each RFED and FCM to certify annually that the firm has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with the Act, rules, regulations and orders thereunder.

- Regulation 5.19 requires each RFED, FCM, CPO, CTA, and IB subject to part 5 to submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed in any material legal proceeding (1) to which the firm is a party to or to which its property or assets is subject with respect to retail forex transactions, or (2) instituted against any person who is a principal of the firm arising from conduct in such person's capacity as a principal of that firm.

- Regulation 5.20 requires RFEDs, FCMs and IBs to submit documentation requested pursuant to certain types of special calls by the Commission.

- Regulation 5.23 requires RFEDs, FCMs and IBs to notify the Commission regarding bulk transfers and bulk liquidations of customer accounts.

The rules establish reporting and recordkeeping requirements that are necessary to implement the provisions of the Food, Conservation, and Energy Act of 2008¹ regarding off-exchange transactions in foreign currency with members of the public. The rules are intended to promote customer protection by providing safeguards against irresponsible or fraudulent business practices.²

With respect to the collection of information, the CFTC invites comments on:

¹ Public Law 110-246, 122 Stat. 1651, 2189-220 (2008).

² See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55410, 55416 (Sept. 10, 2010).

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.³

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered

³ 17 CFR 145.9.

as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection for 146 respondents, which include RFEDs, FCMs, IBs, CPOs, and CTAs.

The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 146.

Estimated Average Burden Hours Per Respondent: 2,865.⁴

Estimated Total Annual Burden Hours: 418,286.

Frequency of Collection: As applicable.

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

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 21, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

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⁴ This figure has been rounded to the nearest one: 2,864.972 to 2865.