



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection

3038-0092, Customer Clearing Documentation and Timing of Acceptance for Clearing

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 of 1995 (“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 extension of information collection requirements relating to the obligation to maintain clearing documentation records between the customer and the customer’s clearing member under the Commodity Exchange Act, OMB Control No. 3038–0092 (Customer Clearing Documentation and Timing of Acceptance for Clearing).

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 “Customer Clearing Documentation and Timing of Acceptance for Clearing,” Collection Number 3038–0092, by any of the following methods:

- *CFTC website:* <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- *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: Catherine Brescia, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, (202) 418-6236; email: cbrescia@cftc.gov, and refer to OMB Control No. 3038-0092.

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(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. PRA section 3506(c)(2)(A) (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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission 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.¹

¹ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

Title: Customer Clearing Documentation and Timing of Acceptance for Clearing (OMB Control No. 3038-0092). This is a request for extension of a currently approved information collection.

Abstract: Section 4d(c) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 6d(c)), as amended by the Dodd-Frank Wall Street and Reform Consumer Protection Act (“Dodd-Frank Act”), directs the Commission to require futures commission merchants (“FCMs”) to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. Similarly, CEA section 4s(j)(5) (7 U.S.C. 6s(j)(5)), as added by the Dodd-Frank Act, requires swap dealers (“SDs”) and major swap participants (“MSPs”) to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. CEA section 4s(j)(5) also requires SDs and MSPs to ensure that any persons providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions from persons whose involvement in pricing, trading, or clearing activities might bias their judgment or contravene the core principle of open access. CEA section 4s(j)(6) prohibits an SD or MSP from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Act. CEA section 2(h)(1)(B)(ii) (7 U.S.C. 2(h)(1)(B)(ii)) requires that derivatives clearing organization (“DCO”) rules provide for the nondiscriminatory clearing of swaps executed bilaterally or through an unaffiliated designated contract market or swap execution facility.

To address these provisions, the Commission promulgated regulations that prohibit arrangements involving FCMs, SDs, MSPs, and DCOs that would (a) disclose to

an FCM, SD, or MSP the identity of a customer's original executing counterparty;² (b) limit the number of counterparties with whom a customer may enter into a trade;³ (c) restrict the size of the position a customer may take with any individual counterparty, apart from an overall credit limit for all positions held by the customer at the FCM;⁴ (d) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available;⁵ or (e) prevent compliance with specified time frames for acceptance of trades into clearing set forth in Commission regulations §§ 1.74(b), 23.610(b), or 39.12(b)(7).⁶ Additionally, the Commission requires, through regulation § 39.12(b)(7)(i)(B), DCOs to coordinate with clearing members to establish prompt processing of trades. Regulations §§ 1.74(a) and 23.610(a) require reciprocal coordination by FCMs, SDs, and MSPs that are clearing members.

Under the above regulations, SDs, MSPs, FCMs, and DCOs are required to develop and maintain written customer clearing documentation and trade processing procedures. Maintenance of contracts, policies, and procedures is prudent business practice. All SDs, MSPs, FCMs, and DCOs maintain documentation consistent with these regulations. The regulations are crucial both for effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs. Each of these entities has a general recordkeeping obligation for these requirements under the Commission's regulations (17 CFR 39.20 for DCOs; 17 CFR 23.606 for SDs and MSPs; and 17 CFR 1.73 for FCMs).

As indicated below, the information collection burden arising from the regulations primarily is restricted to the costs associated with the affected registrants' obligation to

² 17 CFR 1.72(a), 23.608(a), and 39.12(a)(1)(vi).

³ 17 CFR 1.72(b), 23.608(b), and 39.12(a)(1)(vi).

⁴ 17 CFR 1.72(c), 23.608(c), and 39.12(a)(1)(vi).

⁵ 17 CFR 1.72(d), 23.608(d), and 39.12(a)(1)(vi).

⁶ 17 CFR 1.72(e), 23.608(e), and 39.12(a)(1)(vi).

maintain records related to clearing documentation between the customer and the customer's clearing member, and trade processing procedures between DCOs and FCMs, SDs, and MSPs. The information collection obligations are necessary to implement certain provisions of the CEA, including ensuring that registrants exercise effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs.

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

- 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.⁷

⁷ 17 CFR 145.9.

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 <https://www.ftc.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 Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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

Estimated Number of Respondents: 180

Estimated Average Burden Hours Per Respondent: 40

Estimated Total Annual Burden Hours Per Respondent: 7,200

Frequency of Collection: As needed.

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

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

Dated: August 22, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

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