

applicable standard established by section 325 of the Act, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests substantiating the representation. For

representations of the light output and life ratings of any covered product that is a general service lamp, unless otherwise provided by paragraph (a), the Commission will accept as a reasonable

basis scientific tests conducted according to the following applicable IES test protocols that substantiate the representations:

For measuring light output (in lumens):	
General Service Fluorescent	IES LM 9.
Compact Fluorescent	IES LM 66.
General Service Incandescent (Other than Reflector Lamps)	IES LM 45.
General Service Incandescent (Reflector Lamps)	IES LM 20.
For measuring laboratory life (in hours):	
General Service Fluorescent	IES LM 40.
Compact Fluorescent	IES LM 65.
General Service Incandescent (Other than Reflector Lamps)	IES LM 49.
General Service Incandescent (Reflector Lamps)	IES LM 49.

4. In § 305.15(d)(4) is revised to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(d) * * *

(4) For any covered product that is a general service lamp and operates at discrete, multiple light levels (e.g., 800, 1600, and 2500 lumens), the light output, energy cost, and wattage disclosures required by this section must be provided at each of the lamp's levels of light output and the lamp's life provided on the basis of the shortest lived operating mode. The multiple numbers shall be separated by a "/" (e.g., 800/1600/2500 lumens) if they appear on the same line on the label.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011-19041 Filed 7-29-11; 8:45 am]

BILLING CODE 6750-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 23

RIN 3038-AD51

Clearing Member Risk Management

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules address risk management for cleared trades by futures commission merchants, swap dealers, and major swap participants that are clearing members.

DATES: Submit comments on or before September 30, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038-AD51, by any of the following methods:

• *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• *Courier:* Same as mail above.

Please submit your comments using only one method. RIN number, 3038-AD51, must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the CFTC 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 CFTC's regulations.¹

The CFTC 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 this action 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.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director and Chief Counsel, 202-418-5480, jlawton@cftc.gov, or Christopher A. Hower, Attorney-Advisor, 202-418-6703, chower@cftc.gov, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).² Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA or Act)³ to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight. Title VII also includes amendments to the federal securities laws to establish a similar

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

³ 7 U.S.C. 1 *et seq.*

¹ 17 CFR 145.9.

regulatory framework for security-based swaps under the authority of the Securities and Exchange Commission (SEC).

II. Proposed Regulations

A. Introduction

A fundamental premise of the Dodd-Frank Act is that the use of properly regulated central clearing can reduce systemic risk. The Commission has proposed extensive regulations addressing open access and risk management at the derivatives clearing organization (DCO) level.⁴ The Commission also has proposed regulations addressing risk management for swap dealers (SDs) and major swap participants (MSPs).⁵

Clearing members provide the portals through which market participants gain access to DCOs as well as the first line of risk management. Accordingly, the Commission is proposing regulations to facilitate customer access to clearing and to bolster risk management at the clearing member level. The proposal addresses risk management for cleared trades by FCMs and SDs and MSPs that are clearing members.

B. Clearing Member Risk Management

Section 3(b) provides that one of the purposes of the Act is to ensure the financial integrity of all transactions subject to the Act and to avoid systemic risk. Section 8a(5) authorizes the Commission to promulgate such regulations that it believes are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. Risk management systems are critical to the avoidance of systemic risks.

Section 4s(j)(2) requires each SD and MSP to have risk management systems adequate for managing its business. Section 4s(j)(4) requires each SD and MSP to have internal systems and procedures to perform any of the functions set forth in Section 4s.

Section 4d requires FCMs to register with the Commission. It further requires FCMs to segregate customer funds. Section 4f requires FCMs to maintain certain levels of capital. Section 4g establishes reporting and recordkeeping requirements for FCMs.

These provisions of law and Commission regulations promulgated

pursuant to these provisions create a web of obligations designed to secure the financial integrity of the markets and the clearing system, to avoid systemic risk, and to protect customer funds. Effective risk management by FCMs is essential to achieving these goals. For example, a poorly managed position in the customer account can cause an FCM to become undersegregated. A poorly managed position in the proprietary account can cause an FCM to fall out of compliance with capital requirements.

Even more significantly, a failure of risk management can cause an FCM to become insolvent and default to a DCO. This can disrupt the markets and the clearing system and harm customers. Such failures have been predominately attributable to failures in risk management.⁶

As noted previously, the Dodd-Frank Act requires the increased use of central clearing. In particular, Section 2(h) establishes procedures for the mandatory clearing of certain swaps. As stated in the Senate Committee report: "Increasing the use of central clearinghouses * * * will provide safeguards for American taxpayers and the financial system as a whole."⁷

The Commission has proposed extensive risk management standards at the DCO level. Given the increased importance of clearing and the expected entrance of new products and new participants into the clearing system, the Commission believes that enhancing the safeguards at the clearing member level is necessary as well.

Bringing swaps into clearing will increase the magnitude of the risks faced by clearing members. In many cases, it will change the nature of those risks as well. Many types of swaps have their own unique set of risk characteristics. The Commission believes that the increased concentration of risk in the clearing system combined with the changing configuration of the risk warrant additional vigilance not only by DCOs but by clearing members as well.

FCMs generally have extensive experience managing the risk of futures. They generally have less experience managing the risks of swaps. The Commission believes that it is a reasonable precaution to require that certain safeguards be in place. It would ensure that FCMs, who clear on behalf

of customers, are subject to standards at least as stringent as those applicable to SDs and MSPs, who clear only for themselves. Failure to require SDs, MSPs, and FCMs that are clearing members to maintain such safeguards would frustrate the regulatory regime established in the CEA, as amended by the Dodd-Frank Act. Accordingly, the Commission believes that applying the risk-management requirements in the proposed rules to SDs, MSPs, and FCMs that are clearing members are reasonably necessary to effectuate the provisions and to accomplish the purposes of the CEA.

Proposed § 1.73 would apply to clearing members that are FCMs; proposed § 23.609 would apply to clearing members that are SDs or MSPs. These provisions would require these clearing members to have procedures to limit the financial risks they incur as a result of clearing trades and liquid resources to meet the obligations that arise. The proposal would require clearing members to:

- (1) Establish credit and market risk-based limits based on position size, order size, margin requirements, or similar factors;
- (2) Use automated means to screen orders for compliance with the risk-based limits;
- (3) Monitor for adherence to the risk-based limits intra-day and overnight;
- (4) Conduct stress tests of all positions in the proprietary account and all positions in any customer account that could pose material risk to the futures commission merchant at least once per week;
- (5) Evaluate its ability to meet initial margin requirements at least once per week;
- (6) Evaluate its ability to meet variation margin requirements in cash at least once per week;
- (7) Evaluate its ability to liquidate the positions it clears in an orderly manner, and estimate the cost of the liquidation at least once per month; and
- (8) Test all lines of credit at least once per quarter.

Each of these items has been observed by Commission staff as an element of an existing sound risk management program at a DCO or an FCM.

The Commission does not intend to prescribe the particular means of fulfilling these obligations. As is the case with DCOs, clearing members will have flexibility in developing procedures that meet their needs. For example, items (1) and (2) could be addressed through simple numerical limits on order or position size or through more complex margin-based limits. Further examples could include

⁴ See, e.g., 76 FR 3698 (Jan. 20, 2011) (Risk Management Requirements for Derivatives Clearing Organizations). These proposed regulations include a requirement that a DCO adopt rules addressing each clearing member's risk management policies and procedures. See proposed § 39.13(h)(5).

⁵ See, e.g., 75 FR 91397 (Nov. 23, 2010) (Regulations Establishing Duties of Swap Dealers and Major Swap Participants).

⁶ See, e.g., the failure of Volume Investors Corporation in 1986, the failure of Griffin Trading Company in 1998, and the failure of Klein & Company Futures, Inc. in 2000.

⁷ S. Rep. No. 111-176, at 32 (2010) (report of the Senate Committee on Banking, Housing, and Urban Affairs).

price limits to reject orders that are too far away from the market, or limits on the number of orders that could be placed in a short time.

The following are examples of tools that could be used to monitor for risk and to mitigate it:

- The ability to see all working and filled orders for intraday risk management;
- A “kill button” that cancels all open orders for an account and disconnects electronic access.

The Commission believes that these proposals are consistent with international standards. In August 2010, the International Organization of Securities Commissions issued a report entitled “Direct Electronic Access to Markets.”⁸ The report set out a number of principles to guide markets, regulators, and intermediaries. Principle 6 states that:

A market should not permit DEA [direct electronic access] unless there are in place effective systems and controls reasonably designed to enable the management of risk with regard to fair and orderly trading including, in particular, automated pre-trade controls that enable intermediaries to implement appropriate trading limits.

Principle 7 states that:

Intermediaries (including, as appropriate, clearing firms) should use controls, including automated pre-trade controls, which can limit or prevent a DEA Customer from placing an order that exceeds a relevant intermediary’s existing position or credit limits.

Stress tests are an essential risk management tool. The purpose in conducting stress tests is to determine the potential for significant losses in the event of extreme market events and the ability of traders and clearing members to absorb the losses. As was the case with the DCO risk management proposal, the Commission does not intend to prescribe the manner in which clearing members conduct stress tests. Rather, the Commission would monitor to determine whether clearing members were routinely conducting stress tests reasonably designed for the types of risk the clearing members and their customers face.

The proposal also would require clearing members to evaluate their ability to meet calls for initial and variation margin. This includes testing for liquidity of financial resources available to cover exposures due to market events. Routine testing of this sort diminishes the chance of a default based on liquidity problems.

Each clearing member also would be required to evaluate periodically its

ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation. In recent years, Commission staff has observed instances where a trader was unable to meet its financial obligations and the FCM had to assume responsibility for the trader’s portfolio. Under these conditions, an FCM would normally liquidate the portfolio promptly. In some instances, however, where the portfolio contained large and complex options positions, the FCM found that it was not easy to liquidate. The Commission believes that clearing members should periodically review portfolios to ensure that they have the ability to liquidate them and to estimate the cost of such liquidation. The exercise should also address the ability of the FCM to put on appropriate hedges to mitigate risk pending liquidation. Such an exercise would take into account the size of the positions, the concentration of the positions in particular markets, and the liquidity of the markets.

Finally, the proposal would require each clearing member to establish written procedures to comply with this regulation and to keep records documenting its compliance. The Commission believes that these are important elements of a good risk management program.

The Commission requests comments on all aspects of the risk management proposal. In particular the Commission requests comment on:

- The extent to which each DCO already (i) Requires clearing member FCMs, SDs, and MSPs to have each component, and (ii) audits compliance with such requirement;
- The extent to which each component has otherwise been incorporated into existing risk management systems of clearing member FCMs, SDs, and MSPs; and
- The potential costs and benefits of each component.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.⁹ The Commission previously has established certain definitions of “small entities” to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.¹⁰

The proposed regulations would affect FCMs, DCOs, SDs, and MSPs.

The Commission previously has determined, however, that FCMs should not be considered to be small entities for purposes of the RFA.¹¹ The Commission’s determination was based, in part, upon the obligation of FCMs to meet the minimum financial requirements established by the Commission to enhance the protection of customers’ segregated funds and protect the financial condition of FCMs generally.¹² The Commission also has previously determined that DCOs are not small entities for the purpose of the RFA.¹³

SDs and MSPs are new categories of registrants. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for purposes of the RFA. Like FCMs, SDs will be subject to minimum capital and margin requirements and are expected to comprise the largest global financial firms. The Commission is required to exempt from SD registration any entities that engage in a de minimis level of swap dealing in connection with transactions with or on behalf of customers. The Commission anticipates that this exemption would tend to exclude small entities from registration. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that SDs not be considered “small entities” for essentially the same reasons that FCMs have previously been determined not to be small entities and in light of the exemption from the definition of SD for those engaging in a de minimis level of swap dealing.

The Commission also has previously determined that large traders are not “small entities” for RFA purposes.¹⁴ In that determination, the Commission considered that a large trading position was indicative of the size of the business. MSPs, by statutory definition, maintain substantial positions in swaps or maintain outstanding swap positions that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that MSPs not be considered “small entities” for essentially the same reasons that large traders have

¹¹ *Id.* at 18619.

¹² *Id.*

¹³ See 66 FR 45605, 45609, Aug. 29, 2001.

¹⁴ *Id.* at 18620.

⁸ The report can be found at <http://www.iosco.org>.

⁹ 5 U.S.C. 601 *et seq.*

¹⁰ 47 FR 18618, Apr. 30, 1982.

previously been determined not to be small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether SDs and MSPs should be considered small entities for purposes of the RFA.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)¹⁵ imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Clearing Member Position Risk Management." 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 control number. The OMB has not yet assigned this collection a control number.

The collection of information under these proposed regulations is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act. Specifically, it is essential both for effective risk management and for the efficient operation of trading venues among swap dealers, major swap participants, and futures commission merchants. The position risk management requirement established by the proposed rules diminishes the chance for a default, thus ensuring the financial integrity of markets as well as customer protection.

If the proposed regulations are adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA 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." The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

Swap dealers, major swap participants, and futures commission merchants would be required to develop and monitor procedures for position risk management in accordance with proposed rules 1.73 and 23.609.

The annual burden associated with these proposed regulations is estimated to be 524 hours, at an annual cost of \$52,400 for each futures commission merchant, swap dealer, and major swap participant. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The Commission has characterized the annual costs as initial costs because the Commission anticipates that the cost burdens will be reduced dramatically over time as the documentation and procedures required by the proposed regulations become increasingly standardized within the industry.

This hourly burden primarily results from the position risk management obligations that would be imposed by proposed regulations 1.73 and 23.609. Proposed 1.73 and 23.609 would require each futures commission merchant, swap dealer, and major swap participant to establish and enforce procedures to establish risk-based limits, conduct stress testing, evaluate the ability to meet initial and variation margin, test lines of credit, and evaluate the ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation. The Commission believes that each of these items is currently an element of existing risk management programs at a DCO or an FCM. Accordingly, any additional expenditure related to §§ 1.73 and 23.609 likely would be limited to the time initially required to review and, as needed, amend, existing risk management procedures to ensure that they encompass all of the required elements and to develop a system for performing these functions as often as required.

In addition, proposed §§ 1.73 and 23.609 would require each futures commission merchant, swap dealer, and major swap participant to establish written procedures to comply, and maintain records documenting compliance. Maintenance of compliance procedures and records of compliance is

prudent business practice and the Commission anticipates that swap dealers and major swap participants already maintain some form of this documentation.

With respect to the required position risk management, the Commission estimates that futures commission merchants, swap dealers, and major swap participants will spend an average of 2 hours per trading day, or 504 hours per year, performing the required tests. The Commission notes that the specific information required for these tests is of the type that would be performed in a prudent market participant's ordinary course of business.

In addition to the above, the Commission anticipates that futures commission merchants, swap dealers, and major swap participants will spend an average of 16 hours per year drafting and, as needed, updating the written policies and procedures to ensure compliance required by proposed §§ 1.73 and 23.609, and 4 hours per year maintaining records of the compliance.

The hour burden calculations below are based upon a number of variables such as the number of futures commission merchants, swap dealers, and major swap participants in the marketplace and the average hourly wage of the employees of these registrants that would be responsible for satisfying the obligations established by the proposed regulation.

There are currently 134 futures commission merchants based on industry data. Swap dealers and major swap participants are new categories of registrants. Accordingly, it is not currently known how many swap dealers and major swap participants will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective after July 16, 2011, the date on which the Dodd-Frank Act becomes effective. While the Commission believes there will be approximately 200 swap dealers and 50 major swap participants, it has taken a conservative approach, for PRA purposes, in estimating that there will be a combined number of 300 swap dealers and major swap participants who will be required to comply with the recordkeeping requirements of the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11-3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation

¹⁵ 44 U.S.C. 3501 *et seq.*

and Brokerage" industry is \$74.41.¹⁶ Because swap dealers, major swap participants, and futures commission merchants include large financial institutions whose operations management employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these proposed regulations based upon an average salary of \$100 per hour.

Accordingly, the estimated hour burden was calculated as follows: *Developing and Conducting Position Risk Management Procedures for Swap Dealers and Major Swap Participants*. This hourly burden arises from the proposed requirement that swap dealers and major swap participants establish and perform testing of clearing member risk management procedures.

Number of registrants: 300.

Frequency of collection: Daily.

Estimated number of responses per registrant: 252 [252 trading days].

Estimated aggregate number of responses: 75,600 [300 registrants × 252 trading days].

Estimated annual burden per registrant: 504 hours [252 trading days × 2 hours per record].

Estimated aggregate annual hour burden: 151,200 hours [300 registrants × 252 trading days × 2 hours per record].

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for Swap Dealers and Major Swap Participants. This hourly burden arises from the proposed requirement that swap dealers and major swap participants make and maintain records documenting compliance related to clearing member risk management.

Number of registrants: 300.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 300.

Estimated annual hour burden per registrant: 20 hours.

Estimated aggregate annual hour burden: 6,000 burden hours [300 registrants × 20 hours per registrant].

Developing and Conducting Position Risk Management Procedures for Futures Commission Merchants: This hourly burden arises from the proposed requirement that futures commission merchants establish and perform testing of clearing member risk management procedures.

Number of registrants: 134.

Frequency of collection: Daily.

Estimated number of responses per registrant: 252 [252 trading days].

Estimated aggregate number of responses: 33,768 [134 registrants × 252 trading days].

Estimated annual burden per registrant: 504 hours [252 trading days × 2 hours per record].

Estimated aggregate annual hour burden: 67,536 hours [134 registrants × 252 trading days × 2 hours per record].

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for Futures Commission Merchants. This hourly burden arises from the proposed requirement that futures commission merchants make and maintain records documenting compliance related to clearing member risk management.

Number of registrants: 134.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 134.

Estimated annual hour burden per registrant: 20 hours.

Estimated aggregate annual hour burden: 2,680 burden hours [134 registrants × 20 hours per registrant]. Based upon the above, the aggregate hour burden cost for all registrants is 227,416 burden hours and \$22,741,600 [227,416 × \$100 per hour].

In addition to the per hour burden discussed above, the Commission anticipates that swap dealers, major swap participants, and futures commission merchants may incur certain start-up costs in connection with the proposed recordkeeping obligations. Such costs would include the expenditures related to re-programming or updating existing recordkeeping technology and systems to enable the swap dealer, major swap participant, or futures commission merchant to collect, capture, process, maintain, and re-produce any newly required records. The Commission believes that swap dealers, major swap participants, and futures commission merchants generally could adapt their current infrastructure to accommodate the new or amended technology and thus no significant infrastructure expenditures would be needed. The Commission estimates the programming burden hours associated with technology improvements to be 60 hours.

According to recent Bureau of Labor Statistics, the mean hourly wages of computer programmers under occupation code 15–1021 and computer software engineers under program codes 15–1031 and 1032 are between \$34.10 and \$44.94.¹⁷ Because swap dealers, major swap participants, and futures

commission merchants generally will be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of \$60 per hour. Accordingly, the start-up burden associated with the required technological improvements would be \$3,600 [\$60 × 60 hours] per affected registrant or \$1,562,400 [\$3,600 × 434 registrants] in the aggregate.

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at OIRAsubmissions@omb.eop.gov. Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting <http://www.RegInfo.gov>. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

C. Consideration of Costs and Benefits Under Section 15(a) of the CEA

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before promulgating a regulation under the CEA. Section 15(a) of the CEA specifies

¹⁶ <http://www.bls.gov/oes/current/oes113031.htm>.

¹⁷ <http://www.bls.gov/oes/current/oes113031.htm>.

that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rules involve risk management for cleared trades by futures commission merchants, swap dealers, and major swap participants that are clearing members. The discussion below will consider the proposed rule in light of each section 15(a) concern.

Position Risk Management for Cleared Trades by Futures Commission Merchants, Swap Dealers, and Major Swap Participants That Are Clearing Members

The Commission is proposing regulations that would require FCMs, SDs, and MSPs to put into place certain risk management procedures.

1. Protection of Market Participants

Good risk management practices among FCMs, SDs, and MSPs help insulate DCOs from financial distress. Moreover, while the rule calls for standard risk mitigation measures, it allows FCMs, SDs, and MSPs to use diverse techniques to implement those measures. This makes it less likely that multiple FCMs, SDs, and MSPs would be exposed to identical blind spots during unexpected market developments.

As far as costs are concerned, regular testing of various systems and financial positions requires significant personnel hours and potentially the services of external vendors. The requirement that records be created and maintained may impose costs on FCMs, SDs, and MSPs. The Commission believes that some costs might only be incremental because it believes that well-managed firms would generally already create and maintain records of this type.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The integrity of the markets is enhanced with the certainty that the customer's counterparties (*i.e.*, FCMs,

SDs, and MSPs, as well as DCOs) are more likely to remain solvent during strenuous financial conditions.

As for the costs related to this rule, rigorous stress tests may encourage conservative margin requirements that reduce customers' ability to leverage their positions. Also, higher costs associated with maintaining more stringent risk management practices will ultimately be passed along to customers, likely in the form of larger spreads, which may reduce the liquidity and efficiency of the market. However, more conservative margin requirements and stringent risk management practices will also help reduce systemic risk thereby protecting the integrity of the financial system as a whole.

3. Sound Risk Management Practices

The rule extends the range of parties responsible for rigorous risk management practices which promotes further stability of the entire financial system. However, as mentioned previously, risk management systems can be costly to implement. The Commission does not know at this time, and requests comment on, how many parties will need to upgrade their systems, if any. Additionally, the Commission requests comment from the public as to what the costs might be to upgrade existing systems or install new systems to comply with the proposed regulation.

4. Other Public Interest Considerations

Requiring a significant investment in risk mitigation structures and procedures by all FCMs, SDs, and MSPs increases the number of entities committing time and resources to development of new techniques that have the potential to advance the practice across the entire industry. Such measures contribute to the overall stability of our global financial system.

List of Subjects

17 CFR Part 1

Conflicts of interest, Futures commission merchants, Major swap participants, Swap dealers.

17 CFR Part 23

Conflicts of interests, Futures commission merchants, Major swap participants, Swap dealers.

In light of the foregoing, the Commission hereby proposes to amend Part 1, and Part 23, as proposed to be added at 75 FR 71390, November 23, 2010, and further amended at 75 FR 81530, December 28, 2010, of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Add § 1.73 to part 1 to read as follows:

§ 1.73 Clearing futures commission merchant risk management.

(a) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:

- (1) Establish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors;
- (2) Use automated means to screen orders for compliance with the risk-based limits;
- (3) Monitor for adherence to the risk-based limits intra-day and overnight;
- (4) Conduct stress tests of all positions in the proprietary account and in each customer account that could pose material risk to the futures commission merchant at least once per week;
- (5) Evaluate its ability to meet initial margin requirements at least once per week;
- (6) Evaluate its ability to meet variation margin requirements in cash at least once per week;
- (7) Evaluate its ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation at least once per month; and
- (8) Test all lines of credit at least once per quarter.

(b) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:

- (1) Establish written procedures to comply with this regulation; and
- (2) Keep full, complete, and systematic records documenting its compliance with this regulation.

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

3. The authority citation for part 23 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

4. Add § 23.609 to part 23, subpart J, to read as follows:

§ 23.609 Clearing member risk management.

(a) With respect to clearing activities in futures, security futures products, swaps, agreements, contracts, or transactions described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act, commodity options authorized under section 4c of the Act, or leveraged transactions authorized under section 19 of the Act, each swap dealer or major swap participant that is a clearing member of a derivatives clearing organization shall:

(1) Establish risk-based limits based on position size, order size, margin requirements, or similar factors;

(2) Use automated means to screen orders for compliance with the risk-based limits;

(3) Monitor for adherence to the risk-based limits intra-day and overnight;

(4) Conduct stress tests of all positions at least once per week;

(5) Evaluate its ability to meet initial margin requirements at least once per week;

(6) Evaluate its ability to meet variation margin requirements in cash at least once per week;

(7) Test all lines of credit at least once per quarter; and

(8) Evaluate its ability to liquidate the positions it clears in an orderly manner, and estimate the cost of the liquidation.

(b) Each swap dealer or major swap participant that is a clearing member of a derivatives clearing organization shall:

(1) Establish written procedures to comply with this regulation; and

(2) Keep full, complete, and systematic records documenting its compliance with this regulation.

Issued in Washington, DC, on July 19, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Clearing Member Risk Management—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn and Chilton voted in the affirmative; Commissioners O'Malia and Sommers voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking for enhanced risk management for clearing members. One of the primary goals of the Dodd-Frank Wall Street Reform and

Consumer Protection Act was to reduce the risk that swaps pose to the economy. The proposed rule would require clearing members, including swap dealers, major swap participants and futures commission merchants to establish risk-based limits on their house and customer accounts. The proposed rule also would require clearing members to establish procedures to, amongst other provisions, evaluate their ability to meet margin requirements, as well as liquidate positions as needed. These risk filters and procedures would help secure the financial integrity of the markets and the clearing system and protect customer funds.

[FR Doc. 2011-19362 Filed 7-29-11; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 23, and 39

RIN 3038-AD51

Customer Clearing Documentation and Timing of Acceptance for Clearing

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules address: The documentation between a customer and a futures commission merchant that clears on behalf of the customer, and the timing of acceptance or rejection of trades for clearing by derivatives clearing organizations and clearing members.

DATES: Submit comments on or before September 30, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038-AD51, by any of the following methods:

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

Please submit your comments using only one method. RIN number, 3038-AD51, must be in the subject field of responses submitted via e-mail, and

clearly indicated on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the CFTC 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 CFTC's regulations.¹

The CFTC 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 this action 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.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director and Chief Counsel, 202-418-5480, jlawton@cftc.gov, or Christopher A. Hower, Attorney-Advisor, 202-418-6703, chower@cftc.gov, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).² Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA or Act)³ to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting

¹ 17 CFR 145.9.

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

³ 7 U.S.C. 1 *et seq.*