



**OMB Control No. 3038-0080**

June 27, 2022

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
3 Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, D.C. 20581

Dear Mr. Kirkpatrick,

The Futures Industry Association (“**FIA**”)<sup>1</sup> submits this letter to the Commodity Futures Trading Commission (“**CFTC**” or the “**Commission**”) regarding its Notice of Intent to Extend Collection Number 3038-0080: Annual Report for Chief Compliance Officer of Registrants (“**Federal Register Release**”).<sup>2</sup> Many of FIA’s members are Futures Commission Merchant (“**FCM**”) registrants or swap dealer registrants with the CFTC. As such, they are required to file Chief Compliance Officer (“**CCO**”) reports annually.

## **I. Background**

### **A. Paperwork Reduction Act (“PRA”)**

Pursuant to the PRA, federal agencies must “provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to[:]” (1) assess whether the “information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;” (2) consider whether the agency’s burden estimate is accurate; (3) “enhance the quality, utility, and clarity of the information to be collected;” and (iv) minimize the burden of collection on responders.<sup>3</sup> As part of its approval under the PRA, the Office of Management and Budget reviews a public comment summary and any changes that the relevant federal agency made to the information collection based upon such public comments.<sup>4</sup>

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<sup>1</sup> FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

<sup>2</sup> Agency Information Collection Activities: Notice of Intent to Extend Collection Number 3038-0080: Annual Report for Chief Compliance Officer of Registrants, 87 Fed. Reg. 24535 (Apr. 26, 2022).

<sup>3</sup> 44 U.S.C. 3506(c)(2)(A).

<sup>4</sup> <https://pra.digital.gov/clearance-process/>.



## ***B. CCO Annual Reports***

CFTC Rule 3.3(e) requires that CCOs of FCMs and swap dealers annually submit to the CFTC a report that describes, amongst other things, the registrant’s: “financial, managerial, operational, and staffing resources set aside for compliance . . . including any material deficiencies in such resources.”<sup>5</sup>

Appendix C to Part 3 of the CFTC’s regulations provides a list of information that must be provided in this regard. Specifically, the report must describe: (1) the registrant’s compliance department budget; (2) full-time staffing levels for the compliance department; (3) “partially allocated staff counts (if applicable), with information on how much of such employees’ time is devoted to the Registrant’s compliance matters that are subject to CFTC oversight;” (4) managerial resources; (5) infrastructure information, including technology and software resources; and (6) any third party vendors used.<sup>6</sup> In December of 2019, the CFTC’s Division of Swap Dealer and Intermediary Oversight, now known as the Market Participants Division, issued a staff advisory regarding CCO annual reports.<sup>7</sup> Among other things, Staff Letter 19-24 provided that resource information submitted in CCO annual reports should be specific to the registrant submitting<sup>8</sup> and specific to compliance with the Commodity Exchange Act (“CEA”) and Commission regulations.<sup>9</sup> The CFTC has provided that estimates may be used, but also reiterated that “the ‘Commission expects that the CCO Annual Report will still address shared resources in as much detail as is necessary to convey the information needed to assess the overall compliance activities of the Registrant.’”<sup>10</sup>

## ***C. Federal Register Release***

In the Federal Register Release, the CFTC requests comments on, among other things: (1) whether the information collected in the CCO annual reports will have practical use; and (2) the accuracy of the CFTC’s burden estimate.<sup>11</sup> The CFTC’s estimates that a registrant spends, on average, 1,006 hours annually on its CCO report.<sup>12</sup> The CFTC also stated: “[t]here are no capital costs or operating and maintenance costs associated with this collection.”<sup>13</sup>

## **II. FIA’s Comments**

FIA writes today to provide public comments on the collection of information as part of CCO annual reports. Specifically, FIA’s comments relate to the requirement to include resource-related information in the CCO annual report and the CFTC’s burden estimate for the annual report. FIA’s comments can be summarized as follows:

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<sup>5</sup> 17 C.F.R. 3.3(e).

<sup>6</sup> 17 C.F.R. Part 3, Appendix C, *Guidance on the Application of § 3.3(e), Chief Compliance Officer Annual Report Form and Content* (“**Appendix C**”).

<sup>7</sup> CFTC Letter No. 19-24, Annual Compliance Report Requirements (Dec. 4, 2019), available at <https://www.cftc.gov/PressRoom/PressReleases/8090-19> (“**Staff Letter 19-24**”).

<sup>8</sup> *Id.* at 5 (“Budget and staffing information that is provided at a parent or consolidated level, rather than the Registrant level, is not sufficient to satisfy the reporting requirements of § 3.3(e)(4).”)

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6.

<sup>11</sup> 87 Fed. Reg. at 24536.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*



- The value of the detailed resource information required by Appendix C and Staff Letter 19-24 is minimal.
- The burden estimates in the Federal Register are substantially lower than registrants' actual undertaking. FIA submits that this is, at least in part, due to the resource-related guidance provided in Appendix C and Staff Letter 19-24 which significantly expanded the burden on registrants related to annual CCO reports.

***A. The resource information required has minimal value.***

As the CFTC has recognized, registrants have unique structures and corporate organization. For example, some corporate families have more than one registered entity that is required to submit a CCO annual report, others do not. Some corporate families share a compliance department amongst more than one registered entity, including entity(ies) regulated by another regulator (*e.g.*, the Securities and Exchange Commission). Given these differences from firm-to-firm, comparisons between registrants' resource information offer limited value. Moreover, comparison of a registrants' own resource information year-over-year is of limited value relative to other information at the registrant's disposal. More useful data points to assess the sufficiency of the registrant's resources would be the number and significance of material non-compliance events or other issues identified in a registrant's CCO report. The manual and time intensive process that a registrant must undertake to assess resourcing specific to CEA and CFTC regulatory compliance is not justified by any potential benefit being provided. FIA and SIFMA articulated similar concerns in a 2017 comment letter filed with the Commission.<sup>14</sup>

To allocate percentages of staff time dedicated to CEA and CFTC regulatory compliance where a department may assist more than one registrant necessitates individual inquiry with staff members as to a reasonable allocation of their time and scrutiny of systems and software used to assist with compliance efforts. Moreover, this analysis cannot be readily updated from year-to-year. Headcounts change, new systems and software are acquired, and each year these estimates have to be reconfirmed or revised to ensure their accuracy. Thus, the substantial burden of conducting this analysis each year outweighs the minimal benefit the resource information provides to the CFTC or registrants themselves.

***B. The CFTC's burden estimates do not reflect the significant amount of time that registrants spend on CCO reports annually.***

The burden estimates in the Federal Register are substantially lower than registrants' actual undertaking. At least in part, this is due to the fact that the resource guidance provided in Appendix C and Staff Letter 19-24 significantly expanded the burden on registrants related to annual CCO reports. As discussed above, registrants spend a significant amount of time breaking down resource allocation dedicated to CEA and Commission Regulation compliance. At least one registrant has external assistance dedicated to

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<sup>14</sup> Ltr. from FIA and SIFMA to the CFTC, re: Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments (RIN 3038-AE56) (July 7, 2017) ("preparing these numerical estimates also tends to distract from a more holistic analysis of the sufficiency of compliance resources. Also, preparing these numerical estimates can require making somewhat arbitrary assumptions about allocation of shared resources, which reduces the value this information might have for horizontal reviews by the Commission. It is also difficult to make direct comparisons across Registrants based solely on numerical budget or staffing information because of the diverse organizational structures represented among Registrants.").



resource determinations and estimates that this section of the CCO report alone takes approximately three to four months to complete. Another registrant roughly equated the 1,006 hours included in the CFTC's burden estimate to one person working on the CCO report for five months. In actuality, that registrant says they are multiple times that figure in terms of time dedicated to the CCO report from compliance staff alone.

Moreover, the statement in the CFTC's burden estimate that there are no operating or maintenance costs associated with the CCO annual report is not accurate. FIA members report use of outside counsel and vendors to assist with completing their CCO annual report. Use of such outside resources comes with a cost.

### **III. Conclusion**

FIA respectfully requests that the Commission include FIA's comments contained in this letter in the public comment summary provided to the Office of Management and Budget pursuant to the PRA. FIA also encourages the Commission to take a more principles-based approach to resourcing information in CCO annual reports, and welcomes a conversation with CFTC staff regarding the comments herein.

FIA appreciates the opportunity to submit this letter for the CFTC's consideration. If members of the CFTC or its staff have any questions or a need any additional information, please contact Allison Lurton, FIA's General Counsel and Chief Legal Officer at (202)-772-3057 or [alurton@fia.org](mailto:alurton@fia.org).

Respectfully submitted,

A handwritten signature in black ink that reads 'Allison Lurton'. The signature is written in a cursive, flowing style.

Allison Lurton  
General Counsel and Chief Legal Officer