

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0049

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 regulations provide procedures by which securities brokers and dealers who either register with the Commodity Futures Trading Commission ("Commission") as limited purpose futures commission merchants ("FCMs") or introducing brokers ("IBs"), or are exempt from the requirement to register as a floor broker ("FB") or floor trader ("FT") by virtue of restricting their commodity interest trading activities to security futures products, may request, and the Commission may grant, orders providing exemptive relief from provisions of the Commodity Exchange Act (the "Act") or the Commission's regulations thereunder, beyond the exemptive relief specifically provided by the Commodity Futures Modernization Act of 2000 (the "CFMA"). Authority to grant or deny such requests for exemptive orders is delegated to the Commission's Division of Clearing and Intermediary Oversight. The regulations were adopted in response to the express direction in the CFMA that the Commission adopt such procedures for exemptive orders in connection with the trading by securities brokers and dealers of security futures products.

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 principal beneficiaries of the information required to be disclosed under this regulation are securities brokers and dealers subject to regulation under the Act and the Commission's regulations who seek exemptive orders with respect to the application of particular provisions of the Act or the Commission's regulations as to which exemption has not been expressly granted by the CFMA. The information received pursuant to the regulation will facilitate the process for granting requests for exemptive orders.

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 regulations provide for electronic submission of requests for exemptive orders.

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 regulation is the first effort by the Commission to adopt provisions for requesting exemptive orders for securities brokers or dealers. There are no existing regulations that could be modified to serve a similar purpose.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-I), describe the methods used to minimize burden.

The regulations do not have a significant economic impact on a substantial number of small entities. Certain persons affected by the regulations may be considered small entities. However, the regulations provide a means for requesting a reduction in the otherwise applicable regulatory burden of securities brokers and dealers who engage in security futures transactions.

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.

Securities brokers or dealers who trade security futures products are the primary beneficiaries of the collection, in that providing the information enables Commission staff to consider and grant requests for exemptive orders. Submission of requests for exemptive orders is entirely voluntary and the frequency of such requests is determined solely by the requesters.

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;

The regulation in question does not require the respondent to report any information to the Commission.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Respondents are not required to prepare any written responses upon less than thirty days' notice.

- requiring respondents to submit more than an original and two copies of any document;

Respondents are not required to submit more than an original and two copies of any document.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

The regulation does not impose requirements to retain any records.

- 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;

The regulation does not involve a statistical survey.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The regulation does not involve use of statistical data.

- 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

The regulation does not involve a pledge of confidentiality.

- 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.

The regulation does not require submission of proprietary trade secrets or other information to the Commission. To the extent that submission of such information would support the issuance of an exemptive order, the respondent is free to submit or to withhold such information in his or her discretion.

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 CFR 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.

The Commission published the regulations for comment in the Federal Register and solicited comments on the estimated paperwork burden, all by means of the attached notice. Comments received were addressed by the Commission in adopting the final regulations.

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.

As part of the rulemaking process, the regulation was published in the Federal Register. Thus, members of the public, including respondents, were provided an opportunity to comment on the proposed regulation and related matters, including issues concerning recordkeeping and other paperwork burdens.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 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.

No such circumstances occur.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

Confidential treatment is available pursuant to 17 C.F.R. § 140.98 or 17 C.F.R. § 145.9.

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 regulation does not require the giving of sensitive information, as that term is used in Question 11.

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 hour 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. The Commission received estimates that 350 respondents would file 1.3 responses annually pursuant to § 140.99 for a total of 455 responses, and that 60 respondents would file .4 responses annually pursuant to § 41.41 for a total of 24 responses, or 479 responses altogether. Each response under § 140.99 will take approximately 7 hours, and each response under § 41.41 will take approximately .5 hour for a total burden of 3,197 hours. Preparation of responses would likely be done by a professional-level employee using clerical-level assistance. If a rate of \$25 per hour is assumed, the anticipated cost would be \$79,925.

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 cost 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.

The regulations involve no new start-up or operations and maintenance costs.

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.

The regulation does not create any additional burden on the Commission.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Not applicable.

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.

This question does not apply.