

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0055

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.

Section 124 of the Commodity Futures Modernization Act of 2000 (“CFMA”) amended the Commodity Exchange Act (the “Act”) and added a new Section 5g to the Act to make the Commission a Federal functional regulator for purposes of applying the provisions of Title V, Subtitle A of the Gramm-Leach-Bliley Act (“GLB Act”) addressing consumer privacy to any futures commission merchant (“FCM”), commodity trading advisor (“CTA”), commodity pool operator (“CPO”) or introducing broker (“IB”) that is subject to the Commission’s jurisdiction with respect to any financial activity. In general, Title V requires financial institutions to provide notice to consumers about the institution’s privacy policies and practices, to restrict the ability of a financial institution to share nonpublic personal information about consumers to nonaffiliated third parties, and to permit consumers to prevent the institution from disclosing nonpublic personal information about them to certain non-affiliated third parties by “opting out” of that disclosure. Accordingly, the Commission issued a new Part 160 of its regulations to implement the mandates of Section 124 and Title V of the GLB Act.

2. Indicate how, by whom, and for what purpose the information 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 regulations contain several disclosure requirements. The financial institutions covered by these regulations must prepare and provide the initial notice to all current customers and all new customers at the time of establishing a customer relationship. Subsequently, an annual notice must be provided to all customers at least once during a twelve-month period during the continuation of the customer relationship. The initial notice and opt out notice must be provided to a consumer prior to disclosing nonpublic personal information to certain nonaffiliated third parties.

The regulations also contain consumer reporting requirements. In order for consumers to opt out, they must respond to the opt out notice. At any time during their continued relationship with the institution, consumers have the right to change or update their opt out status with the institution. However, because most financial institutions will not share nonpublic personal information about consumers with nonaffiliated third parties and therefore would not have to

provide opt out notices to consumers or customers, the Commission has found that the annual burden of responding to an opt out notice will be nominal.

The required notices are not required to be submitted to the Commission.

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 required privacy notices may be distributed to consumers electronically upon the consumer's consent. Thus, a financial institution may reasonably expect that a customer who uses the institution's website to obtain financial products and services will receive actual notice of the annual privacy notice if the customer has agreed to accept notices at the institution's website and the institution continuously posts a current notice of its privacy policies and practices in a clear and conspicuous manner on the website. In addition, the regulations provide that an institution may provide an electronic mail address as a reasonable means for the consumer to opt out of the institution's information sharing practices with non-affiliated third parties.

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.

Information of the type required to be collected under the regulation is not currently collected nor is the information available for public disclosure through any other source.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), describe the methods used to minimize burden.

The requirements of these regulations are expressly mandated by the GLB Act and the CFMA and, accordingly, the Commission does not grant any exceptions to small entities from the requirements at this time. However, the regulations provide substantial flexibility so that financial institutions may tailor their practices to their individual needs (e.g., joint notices may be provided by financial institutions so long as the notice applies to all institutions covered by the notice). In addition, firms dually registered as FCMs and as securities broker-dealers may demonstrate compliance with the regulations by complying with comparable rules issued by the SEC.

As noted above, the Commission believes that most financial institutions do not share nonpublic personal information with nonaffiliated third parties, and

thus the annual burden of supplying and responding to an opt out notice should be minimal.

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.

The Gramm-Leach-Bliley Act mandates that annual privacy notices must be provided by financial institutions to consumers with whom they have a customer relationship.

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;

Notices required by these regulations are not required to be submitted to the Commission.

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

These regulations do not apply.

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

These regulations do not apply.

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

Financial institutions are required to retain information regarding a consumer's decision to opt out even after the institution's customer relationship with the institution terminates.

- 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 regulations do 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 the 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

None of these circumstances apply.

- 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.

These regulations do not apply.

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.

66 Fed. Reg. 15549 (March 19, 2001). The Commission received four comments, none of which discussed cost or hour burden.

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.

The Commission contacted the National Futures Association to determine the availability of data, frequency of collection and the clarity of instructions and recordkeeping disclosure and on the data elements to be recorded, disclosed, or reported.

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.

This question does not apply.

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, regulation, or agency policy.

The Commission has provided no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, set forth at 17 CFR Part 145.

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 proposed 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 OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burden 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.”

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 costs factor 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.

See Attachment “B.”

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.

Financial institutions are not required to provide copies of privacy notices to the Commission, and the Commission is not required to review each

institution's privacy policies. Consequently, the annualized cost to the Commission should be minimal, except in cases where the Commission initiates an enforcement proceeding against an institution for non-compliance with the rule.

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

There are new registrants with NFA that must comply with the regulation. The difference in burden hours from the last information collection renewal reflects the fact that the biggest burden in time and expense is borne by new registrants, those firms that must prepare and distribute a privacy notice for the first time. That affects 20 percent of registrants, or 900 firms. The carryover 3,600 registrants need only mail the notice on an annual basis, which is a negligible burden. Thus, the burden hours would be reduced by over 70,000 because only 20 percent of registrants will incur substantial costs.

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.

Part 160
Privacy of Consumer Financial Information

Estimated # of Forms to be Disclosed	Reports Annually by Each Respondent	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden in a Fiscal Year
900 (one time only)	1	900	10.92	9,825
3,600(annually)	95	342,000*	0.01	3,420
Totals: 4,500	96	342,900	0.24	13,245

* This number reflects an estimation of the number of individual commodity interest accounts (roughly 220,000), taking into account the possibility of multiple notices for each account (e.g., from an IB, an FCM and a CTA) as well as joint notices from each financial institution associated with a particular account. This number also includes an estimated number of individual pool participants in the more than 2,000 funds operated by CPOs registered with the Commission.

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Part 160
 Privacy of Consumer Financial Information
 Estimate of Total Annual Cost Burden

Start-up cost burden:

a) For purposes of the Paperwork Reduction Act, Commission staff has estimated that a commodity trading advisor and an introducing broker would require 4 hours of professional time (at \$150 per hour) and 1 hour of clerical or administrative time (at \$15 per hour) to prepare its initial privacy notice:

$$((4 * \$150) + (1 * \$15)) * (175 \text{ CTAs} + 370 \text{ IBs}) = \$335,175$$

b) For futures commission merchants and commodity pool operators, Commission staff has estimated that preparing an initial privacy notice would require 16 hours of professional time (at \$150 per hour) and 4 hours of clerical or administrative time (at \$15 per hour):

$$((16 * \$150) + (4 * \$15)) * (5 \text{ FCMs} + 350 \text{ CPOs}) = \$873,300$$

$$\text{Total start-up cost component (a+b)} = \$ 1,208,475$$

The start-up costs are based upon the number of new registrants during the year who will be preparing an initial privacy notice. There are 900 such registrants, five FCMs, 370 IBs, 350 CPOs and 175 CTAs. The other 3,600 registrants (186 FCMs, 1,300 IBs, 1,401 CPOs and 713 CTAs) are carryovers that have prepared and sent their initial notices in prior years. The cost to this latter group to simply mail another copy of the privacy notice is minor, as noted below.

Annual cost burden:

The Commission estimates that the cost of mailing approximately 220,000 privacy notices annually for 220,000 individual accounts plus 122,000 privacy notices for individual pool participants at an average additional cost per mailing of \$0.02 per notice will be \$6,840. The Commission assumes that most financial institutions will include initial and annual privacy notices to customers with Disclosure Documents or account statements that they currently receive.

Total Cost Burden: \$1,215,315