

Supporting Statement for Interagency Statement on Complex Structured Finance Transactions

In May 2006, the Securities and Exchange Commission (Commission), together with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, issued for public comment a revised Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Transactions (statement). The statement describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with complex structured finance transactions. The statement is intended to ensure that these transactions receive enhanced scrutiny by the institution and to ensure that the institution does not participate in illegal or inappropriate transactions.

A. Justification

1. Circumstances that make the collection necessary:

As recent events have highlighted, a financial institution may assume substantial reputational and legal risk if the institution enters into a complex structured finance transaction with a customer and the customer uses the transaction to circumvent regulatory or financial reporting requirements, evade tax liabilities, or further other illegal or improper behavior.

As financial intermediaries, financial institutions play a critical role in ensuring the integrity of financial markets and maintaining the trust and public confidence essential to the proper functioning of the capital markets. Structured finance products normally serve the legitimate business interests of customers and are an essential part of U.S. and international capital markets. Financial institutions need effective policies and procedures in place to identify those complex structured finance transactions that may involve heightened reputational and legal risk, to ensure that these transactions receive enhanced scrutiny by the institution, and to ensure that the institution does not participate in illegal or inappropriate transactions.

2. Use of the information:

Financial institutions policies and procedures should ensure that an institution's operations are conducted in compliance with applicable law and regulations. This is critical to the institution's well being since an institution may face substantial legal risk including enforcement action by an Agency and lawsuits by private parties if it participates in structured finance transactions that are used by a customer to circumvent regulatory or financial reporting requirements, evade tax liabilities, or further other illegal or improper behavior. The policies and procedures also help the institution avoid reputational risk where the transactions involved are structured to technically comply with existing laws and regulations.

3. Consideration of the use of improved information technology:

Registered broker-dealers and investment advisers may adopt any existing technology relevant to producing or retaining the information.

4. Efforts to identify duplication:

There is no duplication. This collection is unique in that it involves policies and procedures specific to a particular institution and appropriate to the types of structured finance transactions that the institution conducts.

5. Methods used to minimize burden if the collection has a significant impact on substantial number of small entities:

Small institutions are not involved in transactions of this type. Therefore, this collection of information imposes no burden on them.

6. Consequences to the Federal program if the collection were conducted less frequently:

This collection involves only usual and customary recordkeeping and requires no submission to the Commission.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

Not applicable. This collection is conducted consistent with the guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency:

This submission covers a proposed statement that was published in the Federal Register. The Agencies requested comment on all aspects of the statement.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

No assurance of confidentiality is made.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

The collections of information contained in the statement involve the types of policies and procedures already adopted by the large institutions that participate in developing complex structured finance transactions for customers. The statement describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with complex structured finance transactions. The Agencies believe that involved institutions already have developed the policies and procedures addressed in the statement. Thus, the development time for the policies and procedures is usual and customary for any large institution involved in transactions of this type. Further, responsible institutions would update regularly their policies and procedures to ensure that they address transactions appropriately and are adequate for that institution. Nevertheless, the Commission has estimated the burden at 25 burden hours per respondent per year. This is more a marker than a burden estimate since the Agencies believe that the burden is usual and customary.

The Commission believes that 5 registered broker-dealers or investment advisers are involved in complex structured finance transactions activities. The Commission is providing an estimate of 25 burden hours per respondent to cover updating the policies and procedures needed regarding these activities. Therefore, recordkeeping burden for this information collection is as follows:

5 responses @ 25 hours = 125 burden hours

13. Estimates of annualized costs to respondents:

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the rule; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in item no. 12) to comply with the rule.

14. Estimate of annualized costs to the government:

Not applicable.

15. Change in burden:

There is no change.

16. Information regarding collections whose results are planned to be published for statistical use:

This is a recordkeeping and no data are submitted to the Commission. Therefore, the Commission has no plans to publish data for statistical purposes.

17. Display of expiration date:

The Commission requests OMB permission to omit the expiration date from the Final Guidance. The Commission published the OMB Control Number on the Final Guidance. The Final Guidance will continue in effect until cancelled or modified. The Commission does not expect to revise or republish the Final Guidance in the near future.

B. Collection of Information Employing Statistical Methods

Not applicable because the collection of information will not employ statistical methods.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods

Not applicable.

Attachments:

Proposed Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities
published on May 16, 2006 at 71 FR 28326