

**SUPPORTING STATEMENT FOR NEW AND
REVISED INFORMATION COLLECTIONS**

**Conflicts of Interest Policies and Procedures by
Futures Commission Merchants and Introducing Brokers**

OMB CONTROL NUMBER 3038-0078¹

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 732 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (2010)) amended section 4d of the Commodity Exchange Act to require each futures commission merchant and introducing broker to implement conflicts of interest systems and procedures that: (1) establish structural and institutional safeguards to ensure that any persons within the firm researching or analyzing the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure or oversight of persons whose involvement in trading or clearing activities might potentially bias their judgment or supervision, and (2) address other issues that the Commission determines to be appropriate.

¹ The new information collection requirements discussed in this Supporting Statement were proposed in the notice of proposed rulemaking (NPRM) entitled “Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers” that was published in the *Federal Register* on November 17, 2010 (FCM/IB Conflicts NPRM). See 75 FR 70152. They are included within the final regulations to be published in the *Federal Register* under the title “Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer.” This set of final regulations combines the obligations proposed in five separate NPRMs. See 75 FR 70881 (Nov. 19, 2010) (Designation of A Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer or Major Swap Participant); 75 FR 71391 (Nov. 23, 2010) (Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants); 75 FR 71397 (Nov. 23, 2010) (Regulations Establishing the Duties of Swap Dealers and Major Swap Participants); 75 FR 76666 (Dec. 9, 2010) (Reporting and Recordkeeping and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants); and the FCM/IB Conflicts NPRM. The information collection requirements of each of the five NPRMs were addressed in separate Supporting Statements that have been assigned distinct control numbers by the Office of Management and Budget (OMB). See “Annual Report of the Chief Compliance Officer of Registrants,” OMB control number 3038-0080; “Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants,” OMB control number 3038-0079; “Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants,” OMB control number 3038-0084; “Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants,” OMB control number 3038-0087; and Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers,” OMB control number 3038-0078. The information collection burdens contained in different portions of the final set of regulations will be addressed in separate, final Supporting Statements labeled with the OMB number assigned to them at the proposal stage.

Accordingly, the Commission has adopted a regulation that generally requires futures commission merchants and introducing brokers to develop conflicts of interest procedures and disclosures, to adopt and implement written policies and procedures reasonably designed to ensure compliance with its conflicts of interest and disclosure obligations, and to maintain specified records related to those requirements. “Small introducing brokers,” as defined within the regulation, are subject to modified requirements, but are obligated to adopt certain policies and procedures and to provide specified disclosures. The regulation does not require reporting to the Commission.

The recordkeeping obligations imposed by the regulation are essential to ensuring that futures commission merchants and introducing brokers develop and maintain the conflicts of interest systems, procedures and disclosures required by the CEA and Commission regulations and to the effective evaluation of such registrants’ actual compliance with the CEA and Commission regulations.

- 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 required recordkeeping will be used by Commission staff to evaluate the completeness and effectiveness of the conflicts of interest procedures and disclosures of future commission merchants and introducing brokers.

- 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 regulation requires that recordkeeping be performed in accordance with Commission regulation 1.31, which permits the use of electronic storage media.

- 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 required information is not already collected by the Commission for any other purpose, collected by any other agency, or 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-I), describe the methods used to minimize burden.**

The collection of the required information does not involve any small businesses or small entities, as those terms are used for purposes of OMB Form 83-I.

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 regulation does not impose any reporting requirements.

Failure to maintain the policies, procedures and other records required by the regulation would adversely affect the Commission's ability to ensure the compliance of affected registrants with their conflicts of interest obligations under the CEA and Commission regulations.

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;**

This question does not apply. The regulation does not impose reporting requirements.

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

This question does not apply.

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

This question does not apply. The regulation does not impose reporting requirements.

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

Commission regulation 1.31 expressly requires that:

All books and records required to be kept by the [CEA] or by [Commission] regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the five-year period. All such books and records shall be open to inspection by any representative of the commission or the United States Department of Justice.

- **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;**

This question does not apply. The regulation neither requires nor involves any statistical surveys.

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

This question does not apply. The regulation neither requires nor involves the use of any statistical data classification.

- **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**

This question does not apply. The regulation does not require 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.**

This question does not apply. The regulation does not impose reporting requirements. In any event, the Commission has promulgated regulations to protect the confidentiality of the information collected from respondents. They are set forth in 17 CFR Part 145.

- 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 sought comment from the public and from other federal agencies on the information collection requirements of the regulation. See 75 FR 70152, 70156 (Nov. 17, 2010) (Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers). A copy of the proposed regulation as it appeared in the *Federal Register*, including the explicit solicitation of comment on all aspects of the recordkeeping burden imposed, is attached hereto.

In the FCM/IB Conflicts NPRM (and the other NPRMs captured in the combined final regulations of which these regulations are a part), the Commission estimated the cost burden of the regulations based upon an average salary of \$100 per hour. In response to this estimate, the Working Group of Commercial Energy Firms (Working Group) commented that, inclusive of benefit costs and allocated overhead, the per hour average salary estimate for compliance and risk management personnel should be significantly higher than \$120. The Futures Industry Association (FIA) and the Securities Industry and Financial Management Association (SIFMA) stated that some of the compliance policies required by the proposed regulations would be drafted by both in-house lawyers and outside counsel, so the blended hourly rate should be roughly \$400.

Having considered the comments received and having reviewed the available data, the Commission has determined that \$100 per hour remains a reasonable salary estimate for purposes of the final regulations. In support of this determination, the Commission notes that the salary estimate of \$100 per hour used in the NPRMs was based upon recent Bureau of Labor

Statistics findings, including the mean hourly wage of an employee under occupation code 23-1011, “Lawyers,” that is employed by the “Securities and Commodity Contracts Intermediation and Brokerage Industry,” which is \$82.22; the mean hourly wage of an employee under occupation code 11-3031, “Financial Managers,” (which includes operations managers) in the same industry, which is \$74.41; and the mean hourly wage of an employee under occupation code-13-0141, “Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation” in the same industry, which is \$38.77.² The Commission also notes that, in its proposals, the Commission took the foregoing data and then increased its hourly wage estimate in recognition of the fact that some registrants may be large financial institutions whose employees’ salaries may exceed the mean wage. The Commission also observes that SIFMA’s “Report on Management & Professional Earnings in the Securities Industry – 2010” estimates the average wage of a compliance attorney and a compliance staffer in the U.S. at only \$46.31 per hour. The Commission recognizes that some registrants may hire outside counsel with expertise in the various regulatory areas covered by the combined final regulations and that outside counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fulfill a requested assignment. While the Commission is uncertain about the billing rates that registrants may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Any determination to use outside counsel, however, is at the discretion of the registrant. Finally, the Commission notes that its determination is consistent with the Commission’s estimate for the hourly wage for chief compliance officers under the recently adopted final rules for derivatives clearing organizations.³

The Commission received no comments related to its estimates of the information collection burden associated with the regulation contained in the FCM/IB Conflicts NPRM. Although the final regulation modifies for “small introducing brokers” (as that term is defined in the regulation) certain obligations included in the proposal, the modifications result primarily in a reduction in obligations other than reporting and recordkeeping responsibilities. Accordingly, the Commission has determined that the original burden estimates remain appropriate and has not amended them.

The Commission estimates the information collection burden associated with this regulation to be 44.5 hours, at an annual cost of \$4,450 for each futures commission merchant and introducing broker. The aggregate cost for all futures commission merchants and introducing brokers is estimated to be 80,278 burden hours and \$8,027,800 [80,278 burden hours x \$100 per hour].

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 set forth above, the Commission affirmatively sought comment from the public and federal agencies on the information collection requirements of this regulation. In addition, the Chairman and the Commissioners, as well as Commission staff, participated in numerous meetings with

² See <http://www.bls.gov/oes/2099/mayowe23.1011.htm> and <http://www.bls.gov/oes/current/oes113031.htm>.

³ See 76 FR 69334, 69428 (Nov. 8, 2011) (Derivatives Clearing Organization General Provisions and Core Principles).

representatives of potential swap dealers and major swap participants, trade associations, public interest groups, traders, and other interested parties. The Commission also consulted with other U.S. financial regulators including: (1) the Securities and Exchange Commission (SEC); (2) the Board of Governors of the Federal Reserve System; (3) the Office of the Comptroller of the Currency; and (4) the Federal Deposit Insurance Corporation. Staff from each of these agencies had the opportunity to provide oral and/or written comments to the adopting release describing the combined final regulations, and the final regulations incorporate elements of the comments provided. The Commission also reviewed the SEC's proposed rule concerning business conduct standards for security-based swap dealers and major swap participants.⁴ In addition, the Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission, therefore, monitored global advisory, legislative, and regulatory proposals, and consulted with foreign regulators in developing the set of combined final regulations.

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 are anticipated.

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

This question does not apply. No such decision was made.

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

The Commission will protect proprietary information according to the Freedom of Information Act and the regulations that the Commission has promulgated to protect the confidentiality of collected information contained in 17 CFR 145, "Commission Records and Information." In addition, section 8(a) of the CEA provides for the confidentiality of data and information except under the limited circumstances delineated therein. The Commission also is required to protect certain information pursuant to the Privacy Act of 1974.

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.

⁴ See 76 FR 42396 (July 18, 2011) (Business Conduct Standards for Security Based Swap Dealers and Major Security Based Swap Participants).

This question does not apply. The regulation neither requests nor requires the provision 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 hours 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 and the response to question 8.

As delineated below, the hour burden per registrant associated with the proposed regulation is estimated to be 44.5 hours, at an annual cost of \$4,450. This burden would result from recordkeeping requirements related to the obligations to adopt and implement written policies and procedures to ensure compliance with the regulation, document communications between certain personnel, and provide certain disclosures. The burden relates solely to recordkeeping requirements; the regulation does not contain any reporting requirements.

Currently, there are 159 registered futures commission merchants and 1,645 registered introducing brokers. Accordingly, a total of 1,804 registrants are affected by the regulation. The burden hours are not anticipated to vary widely among registrants.

The annualized costs per registrant and in the aggregate were determined using an average salary of \$100.00 per year. As explained in greater detail above, this amount was determined using data from the Bureau of Labor Statistics and the Commission continues to believe that this is an appropriate salary estimate for purposes of this regulation.

Recordkeeping Related to Maintenance of Conflicts of Interest Policies and Procedures.

Number of registrants: 1,804

Average number of annual responses by each registrant: 1
Estimated average hours per response: 2
Frequency of collection: Annually
Aggregate annual burden: 1,804 registrants x 1 response x 2 hours = 3,608 burden hours

Recordkeeping Related to Communications Between Certain Personnel

Number of registrants: 1,804
Average number of annual responses by each registrant: 20
Estimated average hours per response: 0.5
Frequency of collection: As needed
Aggregate annual burden: 1,804 registrants x 20 responses x 0.5 hours = 18,040 burden hours

Recordkeeping Related to Disclosure Requirements

Number of registrants: 1,804
Average number of annual responses by each registrant: 65
Estimated average hours per response: 0.5
Frequency of collection: As needed
Aggregate annual burden: 1,804 registrants x 65 responses x 0.5 hours = 58,630 hours

Based upon the above, the aggregate cost for all registrants is 80,278 burden hours and \$8,027,800 [80,278 burden hours x \$100 per hour].

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 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 information collection required by the regulations would not involve any capital or start-up capital, operations or maintenance costs as the Commission anticipates that futures commission merchants and introducing brokers already maintain mechanisms to preserve records related to their compliance with regulatory requirements as part of their customary or usual business practices.

- 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 impose any regular reporting requirements. Accordingly, it does not anticipate that the requirements would impose any additional costs to the Federal Government.

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

The program changes or adjustments are required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which established a new regulatory scheme.

- 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.

Attachment A

Part 23 – Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers

OMB Collection File 3038-0078

Number of Registrants	1,804
Estimated Average Burden Hours Per Registrant	44.5
Estimated Annual Cost Per Registrant	\$4,450
Estimated Aggregate Burden Hours	80,278
Estimated Aggregate Cost	\$8,027,800
% of Responses Collected Electronically	N/A (No reporting requirements)

Frequency of Recordkeeping As applicable

Requirement	Estimated # of Registrants Per Year	Average # of Annual Responses Per Registrant	Total #Annual Responses	Estimated Average # of Hours Per Response	Estimated Total # of Hours of Annual Burden in Fiscal Year	Estimated Annual Cost Per Registrant
<u>Recordkeeping</u> Policies and Procedures	1,804	1	1,804	2	3,608	\$200
<u>Recordkeeping</u> Communications	1,804	20	3,608	.5	18,040	\$1,000
<u>Recordkeeping</u> Disclosure	1,804	65	117,260	.5	58,630	\$3,250
Total					80,278	\$4,450