

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0025

### 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 Information collected pursuant to 17 C.F.R § 140.735-6 concerning the practice by former members and employees of the Commodity Futures Trading Commission before the Commission is required to keep the Commission aware of any conflicts of interest that may exist, and to ensure compliance with the requirements of 18 U.S.C. § 207 concerning restrictions in this regard placed upon certain former federal members and employees. In order for the Commission to regulate the practice before it by its former members and employees, 17 C.F.R § 140.735-6(e) generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment to file a brief written statement with the Commission's Office of General Counsel regarding that representation.

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.

As noted above, the information required to be furnished pursuant to 17 C.F.R § 140.735-6(e) is used by the Commission's Office of General Counsel to monitor compliance with the proscriptions upon the appearance before the Commission of its former members and employees as set forth in that rule as well as in 18 U.S.C. § 207. Disclosures made pursuant to the rule are circulated to the Commissioners and to CFTC division directors.

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.

This question does not apply because the paperwork burden imposed on the ex-members and ex-employees of the Commission by 17 C.F.R § 140.735-6 is minimal.

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.

There is no similar information already available. However, the rule does provide that an ex-member or ex-employee of the Commission may file a single comprehensive statement with

the Commission's Office of General Counsel applicable to employment to represent a person before the Commission that is of a recurrent nature.

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 paperwork burden imposed by the rule upon ex-members and ex-employees, who may be small businesses or other small entities, is minimal, requiring only the submission of a brief written statement.

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.

Were this information not collected, the Commission's ability to monitor compliance with the proscriptions described above would be precluded or seriously impaired. The issue of frequency does not apply because 17 C.F.R § 140.735-6 requires information to be reported to the Commission only once upon the happening of an event rather than at predetermined intervals.

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;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents 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;
- 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;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- 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

- 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.

17 C.F.R. § 140.735-6 does not require the collection to be conducted in a manner inconsistent with any of the above requirements.

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 C.F.R. 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.

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.

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

The Commission is affirmatively seeking comment from the public and federal agencies on the proposed information collection. A copy of the proposed regulation as it appears in the *Federal Register* (75 FR 60088; 09/29/2010) including the explicit solicitation of comment on all aspects of the reporting and recordkeeping burdens imposed, is accompanied with this submission.

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.

The Commission does not provide respondents with an assurance of confidentiality, only to the extent permitted by law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act (CEA), which strictly prohibits the Commission, unless specifically authorized by the CEA, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.”

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 information reporting requirements of 17 C.F.R § 140.735-6 do not require sensitive information of the type described in item 11 to be provided.

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.

Based on the Commission's experience in administering the information reporting requirements of 17 C.F.R § 140.735-6, it is estimated that three respondents would each submit an average of one written statement to the Commission during a given year. It is estimated that the time required to prepare each submission would be approximately 1.5 hours, for a total annual burden of 4.5 hours for the three respondents. (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 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.

This question does not apply.

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.

There is no cost to the Federal Government that is particularly attributable to the information collection requirement contained in 17 C.F.R § 140.735-6. These minimal requirements are an integral part of the Commission's, and its General Counsel's general oversight program that would be funded at current levels whether or not information was collected pursuant to the rule.

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

This question does not apply.

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.