SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Regulation S-P

A. JUSTIFICATION

1. Necessity of Information Collection

Subtitle A of Title V of the Gramm-Leach-Bliley Act ("GLBA"), captioned Disclosure of Nonpublic Personal Information ("Title V"), limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. Title V also required the Securities and Exchange Commission ("SEC"), together with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Secretary of the Treasury, the National Credit Union Administration, and the Federal Trade Commission (collectively the "other agencies"), in consultation with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, to prescribe regulations necessary to carry out the purposes of Title V.

SEC representatives participated with representatives from the other agencies in drafting rules to implement Title V. As required by the GLBA, the rules adopted by the SEC, now codified as Regulation S-P, are, to the extent possible, consistent with and comparable to the rules adopted by the other agencies. Regulation S-P, which applies to broker-dealers, investment companies, and federally registered investment advisers ("covered entities"), contains rules of general applicability that are substantially similar to the rules adopted by the other agencies. See Release Nos. 34-42974, IC-24543, IA-1883 (June 22, 2000), 65 FR 40333 (June 29, 2000).

Regulation S-P implements the requirements of Title V of the GLBA, which include the requirement that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties ("privacy notice"). Title V of the GLBA also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option ("opt out notice").

The privacy notices required by Regulation S-P are mandatory. The opt out notices are not mandatory for financial institutions that do not share nonpublic personal information with nonaffiliated third parties except as permitted under one of Regulation S-P exceptions from the opt out requirements. The provisions of Regulation S-P implementing the GLBA's privacy

notice and opt out notice requirements (the "Rule") apply to broker-dealers, SEC-registered investment advisers, and investment companies ("covered entities").

In 2004, the SEC amended Regulation S-P to implement the provision in section 216 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") requiring proper disposal of consumer report information and records. Section 216 of the FACT Act directed the SEC and other federal agencies to adopt regulations requiring that any person who maintains or possesses consumer report information or any compilation of consumer report information derived from a consumer report for a business purpose must properly dispose of the information. The amendments also required the safeguard policies and procedures required by Regulation S-P to be in writing. The SEC submitted this proposed, separate collection of information to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 (see Release Nos. 34–50781, IA–2332, IC–26685 (December 2, 2004), 69 FR 71321, 71326 (December 8, 2004)) and the collection was approved, with an expiration date of November 30, 2007, and most recently renewed with an expiration date of October 31, 2016, under OMB Control No. 3235-0610.

In 2009, the SEC amended Regulation S-P to, together with seven other federal agencies, adopt a model privacy form designed to make it easier for consumers to understand how financial institutions collect and share their personal financial information and to compare different institutions' information practices. Covered entities that customize the two-page form consistent with its instructions may rely on their use of the form as a safe harbor to comply with the Rule's notice requirements.

2. Purpose and Use of the Information Collection

The Rule implements provisions of Title V of the GLBA, which, as explained above, require the provision to consumers of privacy and opt out notices. The notices describe covered entities' information-sharing practices and inform consumers of their right to opt out of certain of these practices. Although the notices are not provided to the SEC, the SEC uses copies of the notices and records of their having been provided to consumers in its examinations and investigations of covered entities to monitor their compliance with the consumer financial privacy requirements of the GLBA and Regulation S-P.

3. Consideration Given to Information Technology

The Rule allows for the provision of privacy and opt out notices by electronic means. In addition, as noted above, in 2009 the SEC adopted a two-page model privacy form that covered entities may customize and use to comply with the Rule's notice requirements. The SEC has made the model privacy form available on its website as a template, and has provided a link on its website to an online model privacy form builder, which should reduce the burden on covered entities of ensuring that their privacy and opt out notices comply with the Rule's requirements.

4. Duplication

In a release entitled Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934, Release No. 34-44730 (Aug. 21, 2001), 66 FR 45137 (Aug. 27, 2001), the SEC adopted amendments to Regulation S-P in light of Section 124 of the Commodity Futures Modernization Act ("CFMA"), which makes the privacy provisions of the GLBA applicable to activity regulated by the Commodity Futures Trading Commission ("CFTC"). These amendments permit CFTC-regulated futures commission merchants and introducing brokers that are registered by notice as broker-dealers to comply with Regulation S-P by complying with the CFTC's financial privacy rules.

5. Effect on Small Entities

The burden of the Rule's requirements on smaller covered entities should be minimized by the SEC's provision of a model privacy form and a link on its website to an online model privacy form builder. In addition, the SEC's website provides a small entity compliance guide prepared by SEC staff, which should help smaller covered entities make use of the model privacy form.

6. Consequences of Not Conducting Collection

The information collection associated with the Rule involves not a reporting burden, but a third-party disclosure burden. Covered entities are required by the GLBA and the Rule to provide privacy notices to their customers not less frequently than annually, and to ensure that their privacy notices are accurate, which may require a covered entity to provide revised privacy notices if it changes its privacy policies or practices. Covered entities are also required to provide opt out notices to their consumers before making certain types of disclosures of nonpublic personal information about a consumer to a nonaffiliated third party. These are statutory requirements, and a covered entity would fail to comply with them if it failed to provide to its consumers privacy notices and opt out notices when required by the GLBA and the Rule.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

No payment or gift is provided to respondents.

10. Confidentiality

No assurance of confidentiality is provided.

11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

12. Burden of Information Collection

SEC staff estimates that, as of December 31, 2014, the Rule's information collection burden applies to approximately 19,876 covered entities (approximately 4,267 broker-dealers, 11,508 SEC-registered investment advisers, and 4,101 investment companies). In view of (a) the minimal recordkeeping burden imposed by the Rule (since the Rule has no recordkeeping requirement and records relating to customer communications already must be made and retained pursuant to other SEC rules); (b) the summary fashion in which information must be provided to customers in the privacy and opt out notices required by the Rule (the model privacy form adopted by the SEC and the other agencies in 2009, designed to serve as both a privacy notice and an opt out notice, is only two pages); (c) the availability to covered entities of the model privacy form and online model privacy form builder; and (d) the experience of covered entities' staff with the notices, SEC staff estimates that covered entities will each spend an average of approximately 12 hours per year complying with the Rule, for a total of approximately 238,512 annual burden-hours (12 x 19,876 = 238,512). SEC staff understands that the vast majority of covered entities deliver their privacy and opt out notices with other communications such as account opening documents and account statements. Because the other communications are already delivered to consumers, adding a brief privacy and opt out notice should not result in added costs for processing or for postage and materials. Also, privacy and opt out notices may be delivered electronically to consumers who have agreed to electronic communications, which further reduces the costs of delivery. Because SEC staff assumes that most paper copies of privacy and opt out notices are combined with other required mailings, the burden-hour estimates above are based on resources required to integrate the privacy and opt notices into another mailing, rather than on the resources required to create and send a separate mailing. SEC staff estimates that, of the estimated 12 annual burden-hours incurred, approximately 8 hours would be spent by administrative assistants at an hourly rate of $74, and approximately 4 hours would be spent by internal counsel at an hourly rate of $380, for a total annualized internal cost of compliance of $2,112 for each of the covered entities (8 x $74 = $592; 4 x $380 = $1,520; $592 + $1,520 = $2,112). Hourly compliance cost estimates for administrative assistant time are derived from the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, modified by SEC staff to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. Hourly compliance cost estimates for internal counsel time are derived from the Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Accordingly, SEC staff

estimates that the total annualized internal cost of compliance for the estimated total hour burden for the approximately 19,876 covered entities subject to the Rule is approximately $41,978,112 ($2,112 x 19,876 = $41,978,112).

13. Costs to Respondents

The information collection is not estimated to impose any burdens other than those discussed in item 12 above.

14. Costs to Federal Government

The information collection does not impose any additional costs on the Federal government.

15. Changes in Burden

The 19,488-hour decrease in estimated total annual burden-hours was due to a decrease in the estimated number of respondents. In 2012 SEC staff estimated the total annual burden-hours at approximately 258,000, calculated using an estimated average of 12 burden-hours for each covered entity and an estimated 21,500 covered entities (12 x 21,500 = 258,000). The current estimate of approximately 238,512 annual burden-hours results from using the same estimated average of 12 burden hours for each covered entity and a lower estimated number of respondents of 19,876 (12 x 19,876 = 238,512); and the result is a decrease of 19,488 in estimated total annual burden-hours (258,000 – 238,512 = 19,488).

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.