

SUPPORTING STATEMENT FOR THE EXTENSION OF AN
EXISTING INFORMATION COLLECTION

Procedural Requirements for Requests for Interpretative,
No-Action and Exemptive Letters

OMB CONTROL NUMBER 3038-0049

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.**

In appropriate circumstances, the staff of the Commodity Futures Trading Commission (“Commission”) issues letters providing interpretative guidance concerning, and exemptive and no-action relief from, specified requirements of the Commodity Exchange Act (“CEA” or “Act”) and the Commission’s regulations. Commission regulation 140.99 sets forth the procedures for submitting requests for such letters and related information requirements.

The information collection requirements associated with Commission regulation 140.99 requests are voluntary. They apply only to parties that choose to request a benefit from Commission staff in the form of the regulatory relief described in Commission regulation 140.99. Such benefits may include, for example: (1) relief from some or all of the burdens associated with other collections of information; (2) relief from regulatory obligations that do not constitute collections of information; (3) interpretations; and/or (4) extensions of time for compliance with certain of the Commission’s regulations. It is likely that persons who would opt to request action under Commission regulation 140.99 will have determined that the information collection burdens that they would assume by doing so will be outweighed substantially by the relief that they seek to receive.

In order to process and properly evaluate a request for an interpretative, no-action or exemptive letter, Commission staff need accurate and complete background information concerning the persons and activities involved, the facts and circumstances relevant to the request, and the legal and/or public policy grounds upon which the request is made. Specifically, the information collection associated with Commission regulation 140.99 is necessary, and is used, to: (1) assist Commission staff in understanding the type of relief that is being requested and the basis for the request and (2) provide Commission staff with a sufficient basis for determining whether: (a) granting the relief requested would be necessary or appropriate under the facts and circumstances presented by the requestor; (b) the relief provided should be conditional and/or time-limited; and (c) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. By identifying the particular information essential to an assessment of a request for an interpretative, no-action or

exemptive letter, the information collection requirements contained in Commission regulation 140.99 reduce the time and resources that those seeking such letters otherwise might expend assembling and submitting materials relevant to their requests. Requestors are able to target their efforts toward the limited information needed by Commission staff. The information collection requirements also expedite Commission staff review of, and response to, requests for relief by increasing the probability that Commission staff will be provided with the needed information at the point of submission.

This information collection also includes requirements that might be imposed as a condition to relief granted by Commission staff in response to a request submitted pursuant to Commission regulation 140.99. Such information collection requirements: (1) serve as substituted compliance for other regulatory requirements that would otherwise be imposed on the requestor; (2) are necessary to ensure that the relief granted by Commission staff is appropriate; and/or (3) are necessary to monitor for the parties' compliance with the conditions imposed. Once again, it is likely that those who would comply with these conditions will have determined that the burden of complying with the conditions is outweighed by the benefit of the relief that they seek to receive.

The information collection associated with Commission regulation 140.98(b) is necessary, and is used, to provide a mechanism whereby persons submitting requests under Commission regulation 140.99 may seek temporary confidential treatment of their request, the Commission staff response thereto, and the grounds upon which such confidential treatment is sought.

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.

See response to Item 1. As noted therein, this information collection is used to facilitate and expedite the submission and evaluation of requests for interpretative, no-action or exemptive letters and the requests for relief from the requirements of the CEA or the Commission's regulations included within them. Specifically, the information collection is used to: (1) assist Commission staff in understanding the type of relief that is being requested and the basis for the request and (2) provide Commission staff with a sufficient basis for determining whether: (a) granting the relief requested would be necessary or appropriate under the facts and circumstances presented by the requestor; (b) the relief provided should be conditional and/or time-limited; and (c) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. The information collection also is used to: (i) provide requestors with a means for substituted compliance with the requirements of the Act or the Commission's regulations; (ii) ensure that the relief granted by Commission staff is appropriate; and/or (iii) permit Commission staff to monitor for the parties' compliance with conditions to the relief.

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 Commission's regulations permit persons subject to the recordkeeping requirements to keep their records electronically.

- 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.**

This information collection applies only to persons who voluntarily request interpretative, no-action or exemptive letters from Commission staff. The nature and the frequency of such requests are determined solely by the requestors. Requests for such letters typically are made due to the unique facts and circumstances presented by the request. Because the situations for which such letters are requested and received are characteristically unique and the relief provided generally is not universally applicable, the information collected (*e.g.*, the type of relief requested, the reasons why relief is needed, the relevant facts, the legal basis for the relief) is not the type of information already collected by the Commission.

Commission regulation 140.99 prevents duplication by permitting requestors to cite to a representative sample of publically available letters previously issued by Commission staff in response to similar circumstances where a recitation of the information contained in the previously issued letters would be repetitious.

- 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.**

This collection of information does not have a significant economic impact on a substantial number of small entities.

- 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.**

As noted above, the information collection requirements apply only to parties that choose to request a benefit from Commission staff in the form of relief from the applicability of the requirements of the CEA or the Commission's regulations or guidance with respect to the application of particular provisions of the Act or the Commission's regulations. The information collected is used to facilitate, evaluate and expedite such requests. Absent the information collection requirements, the responses of Commission staff to such requests could be delayed. The ability of Commission staff to provide the requested relief also would be adversely affected (because, for example, Commission staff might not be able to gain a sufficient understanding of the relevant

facts and circumstances to grant the requested relief or there may be no adequate means of substituted compliance other than the information collection).

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;**

The Commission regulations relevant to this information collection do not require respondents to report information to the Commission more frequently than quarterly. It is possible that, as a condition of no-action or exemptive relief granted by Commission staff, a respondent may be required to report information to the agency more frequently. As noted above, it is likely that persons who would opt to request such relief will have determined that the information collection burdens that they would assume by doing so will be outweighed substantially by the relief that they seek to receive.

- **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.

- **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 requires entities to keep regulatory 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;**

This question does not apply.

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

This question does not apply.

- **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.

- **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.**

The Commission has procedures to protect the confidentiality of information submitted by respondents. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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. 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.**

A Notice of Intent to Extend Information Collection 3038-0049 was published in the *Federal Register* on March 29, 2017 ("Notice"). See 82 FR 15514 (Mar. 29, 2017). The Notice requested comment on this information collection prior to submission to OMB. No relevant comments were received.

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.

As noted above, the Commission published a *Notice of Intent to Extend Information Collection 3038-0049* in the *Federal Register*. See 82 FR 15514 (Mar. 29, 2017). The notice provided a 60-day period during which the public was invited to comment on the information collection and the burdens imposed by it. Therefore, 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. The Commission has neither considered nor made any payment or gift to a respondent.

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

The Commission does not provide respondents with an assurance of confidentiality except as follows: The Commission fully complies with section 8(a)(1) of the CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, from making public “data and information that would separately disclose business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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.**

This question does not apply. The regulation does not request or require the provision of sensitive information, as that term is used in Item 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 our 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. A set forth more in greater detail in Attachment A, the annual respondent burden for this information collection during the renewal period is estimated to be as follows:

Estimated Number of Respondents: 284
Estimated Average Annual Burden Hours per Respondent: 9.5
Estimated Total Annual Burden Hours: 2,704
Estimated Annual Burden Cost: \$227,570
Frequency of Collection: Occasional

In order to establish estimates of the annual information collection burdens associated with requests for interpretative, no-action or exemptive letters submitted pursuant to Commission regulation 140.99, the related relief that may be issued by Commission staff, and attendant requests for confidential treatment made pursuant to Commission regulation 140.98(b), Commission staff reviewed the interpretative, no-action and exemptive letters issued by Commission staff during 2016. This timeframe was chosen because it is believed that such recent experience is indicative of both the quantity of requests that Commission staff expects to receive and the quantity of letters that Commission staff expects to issue on an annual basis during the renewal period and the information collection burdens that may be associated with them. In some cases, the relief granted in 2016 is unlikely to be requested again as it has been superseded by a Commission rulemaking. The projected burden estimates for the renewal period were not reduced accordingly in order to account for the possibility that new issues may arise. It also is possible that certain relief granted in 2016 may be superseded by a future Commission rulemaking. As future rulemakings and their effective dates are speculative, the estimates for the renewal period have not been reduced to account for potential rulemakings. The total burden hour cost estimate was derived by multiplying the estimates of the number of annual respondents by the average burden cost per respondent. Burden costs were calculated using salary data for the applicable professions obtained from the *SIFMA Report on Management and Professional Earnings in the Securities Industry*.

Each request made pursuant to Commission regulation 140.99 is unique. Accordingly, the burden hours associated with individual requests may vary, depending upon the type and complexity of the relief requested, whether the request presents novel and complex issues, the relevant facts and circumstances, and the number of requestors or other affected entities. Commission staff believes that the average burden hour estimates set forth herein sufficiently account for such variances because they are based upon a review of the letters issued pursuant to Commission regulation 140.99 for the most recent

full-calendar year and such letters will be indicative of its experience during the renewal period.

The annual information collection estimates for this renewal period are projected to be lower than the prior renewal period because the burden hour estimates in the prior renewal period reflected anticipated increases in requests for interpretative letters and no-action relief following the implementation of the Wall Street Reform and Consumer Protection Act. As noted in the notice of intent to renew this information collection issued in 2013, such increases were not expected to be permanent. The burden hour estimates were projected to drop significantly after the first year of that renewal period. Again, Commission staff believes that its experience over the most recent calendar year provides sound support for its calculation of the projected information collections burdens for the following three years. It also should be noted that the burden hour calculations in the prior renewal period included burden hours related to Commission regulation 41.3(b). Because the information collection burdens related to that regulation are now included under OMB number 3038-0059, they are no longer included in this OMB number.

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.

This information collection does not involve any new start-up or operations and maintenance costs.

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.**

It is not anticipated that the information collection associated with Commission regulations 140.99 and 140.98(b) will 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.**

See response to Item 12.

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

Supporting Statement for Procedural Requirements for Requests for Interpretative, No-Action and Exemptive Letters

OMB Control Number 3038-0049

Procedural Requirements for Interpretative, No-Action and Exemptive Letters

	1	2	3	4	5	6	7	8	9
	Est. No. of Annual Respondents	Est. Annual Reports or Records per Respondent	Est. Total Annual Responses (1x2)	Estimated Avg. No. of Hours per Response	Est. Annual No. of Burden Hours per Respondent (2x4)	Est. Avg. Burden Hour Cost ¹	Est. Avg. Burden Cost per Respondent (5x6)	Est. Annual Burden Hours	Total Est. Annual Burden Hour Cost of All Responses (1x7)
<u>Reporting</u>									
§ 140.99 (c) - information requirements for letters	78	1	78	24.7	24.7	\$88	\$2,174	1,930	\$169,572
§ 140.99(d) - filing requirements	78	1	78	1	1	\$88	\$88	78	\$6,864
§ 140.99 (c)(3) (ii) – materially changed facts and circumstances	5	1	5	3	3	\$88	\$264	15	\$1,320
§ 140.99(e) – staff response (conditions imposed)	16	1	16	5	5	\$72	\$360	80	\$5,760
§ 140.99(f) - withdrawal of requests	5	1	5	1	1	\$88	\$88	5	\$440
§ 140.98(b) – requests for confidential treatment	42	1	42	1	1	\$88	\$88	42	\$3,696
<u>Total Reporting</u>	224		224	9.6	9.6			2,150	\$187,652

¹ The average salary for a deputy general counsel is \$183,617 per year according to the *SIFMA Report on Management and Professional Earnings in the Securities Industry* (“SIFMA Report”). By dividing \$183,617 per year by 52 (number of weeks per year) and dividing that number by 40 (hours per week), the average per hour cost of a deputy general counsel is determined to be \$88. The deputy general counsel cost is applicable to the reporting requirements associated with Commission regulations 140.99(c), 140.99(d), 140.99(c)(3)(ii), 140.99(f) and 140.98(b). The average salary for a director of compliance is \$148,829 according to the SIFMA Report. By dividing \$148,829 per year by 52 (number of weeks per year) and dividing that number by 40 (hours per week), the average per hour director of compliance cost is determined to be \$72. The director of compliance cost is applicable to the reporting and recordkeeping requirements associated with Commission regulation 140.99(e) and the disclosures to third parties referenced above.

<u>Record-keeping</u>									
§ 140.99(e) - staff response (conditions imposed)	54	4	216	1	4	\$72	\$288	216	\$15,552
<u>Disclosures To Third Parties</u>	6	56.4	338	1	56.4	\$72	\$4,061	338	\$24,366
TOTAL	284	2.7	778	3.5	8.64			2,704	\$227,570