



Commodity Futures Trading Commission Privacy Impact Assessment

System Name: eLaw System

Office: Office of Data and Technology

Date: December 22, 2016

1. Overview

The Commodity Futures Trading Commission (CFTC or Commission) eLaw System is a collection of databases and applications that provide legal support for various Commission activities. The System consists of enterprise-wide database and software solutions that automate the collection, processing, management, retention and analysis of large volumes of information obtained by the CFTC, including but not limited to: information received or created that may be used for preliminary inquiries, investigations or enforcement activity; information that may be used in arbitration, mediation, litigation discovery, court or administrative proceedings; comments from the public received on proposed rulemakings or other matters; information compiled for review and possible disclosure to respond to requests from Congress, other Federal government agencies or international authorities pursuant to memoranda of understanding or other arrangements, or requests under the Freedom of Information Act (FOIA) or Privacy Act of 1974.

CFTC Division of Enforcement (ENF) activities provide the majority of the information in the eLaw System, yet other divisions and sources also provide information, including Division of Swap Dealer and Intermediary Oversight (DSIO), Division of Market Oversight (DMO), Office of General Counsel (OGC), Divisions of Clearing and Risk (DCR), Office of the Executive Director (OED), Office of Legislative Affairs (OLA), and Office of the Inspector General (OIG).

In providing litigation support, the eLaw System covers multiple areas of the Electronic Discovery Reference Model (EDRM), which outlines standards for the capture and exchange of electronically stored information in the discovery process. The eLaw System includes:

1. Forensic tools for the collection, examination, analysis and reporting of information collected for administrative or court proceedings or investigations, including information collected pursuant to court order or discovery rules;
2. Case management system that organizes, shares and manages case documents, pleadings, correspondence and other records and information;
3. Information review systems that image documents, allow for native file and metadata review, computer-assisted review, text analytics, and integrated document productions;

4. Knowledge repository systems that enable case fact, time, and issue management;
5. Transcript management system;
6. Audio analytics system for audio review, research and analysis;
7. FOIA and Privacy Act management request system;
8. Financial investigative system for financial document review;
9. Electronic trial support system for trial preparation and the presentation of evidence;
and
10. Data processing systems for data filtering via electronic data processing software.

The System can collect, process, maintain, and analyze information from a variety of formats including scanned paper documents and native electronic files.

Much of the information in the eLaw System is sensitive and confidential, particularly ENF investigatory and whistleblower information. Such information is often not releasable under FOIA or the Privacy Act because it fits within exceptions or exemptions. Other information, however, is releasable to Congress or members of the public pursuant to Congressional, FOIA or Privacy Act requests, or through procedures in litigation.

2. Data Collected and Stored Within the System

2.1. What information will be collected, used, disseminated or maintained in the system?

The eLaw System includes personal and business information from individuals and firms involved in the markets regulated by the CFTC under the Commodity Exchange Act ("CEA"). Additionally, the System can include information about CFTC employees, volunteers, interns, contractors or consultants related to specific matters or projects. The System also includes information about the activities of CFTC attorneys and investigators working on particular matters.

Where marked below, the table includes the categories of personally identifiable information (PII) that may be collected, used or maintained in the eLaw System, or disseminated from the eLaw System.

| 1. PII Categories | 2. Is collected, processed, disseminated, stored and/ accessed by this system or project | 3. CFTC Employees | 4. Members of the Public | 5. Other (e.g. contractors, other government employees) |
|---|--|-------------------|--------------------------|---|
| Name (for purposes other than contacting federal employees) | X | X | X | X |
| Date of Birth | X | X | X | |
| Social Security Number (full SSN as well as last 4 digits) | X | X | X | |
| Tax Identification Number (TIN) | X | | X | |
| Photographic Identifiers | X | | X | |
| Driver's License | X | | X | |

| | | | | |
|---|---|---|---|---|
| Mother's Maiden Name | X | | X | |
| Vehicle Identifiers | X | | X | |
| Personal Mailing Address | X | X | X | X |
| Personal E-Mail Address | X | X | X | X |
| Personal Phone Number | X | X | X | X |
| Medical Records Number | X | X | X | |
| Medical Notes or some other Health Information | X | X | X | |
| Financial Account Information | X | X | X | |
| Certificates | X | | X | |
| Legal Documents | X | X | X | |
| Device Identifiers | | | X | |
| Biometric Identifiers (e.g., fingerprints of registrants and applicants for registration) | X | | X | |
| Web Uniform Resource Locator(s) | X | X | X | |
| Education Records | X | X | X | |
| Criminal Records | X | X | X | |
| Military Status | X | X | X | |
| Employment Status | X | X | X | |
| Foreign Activities | X | | X | |
| Tip, Complaint, or Referral information | X | | X | |
| Whistleblower information | X | | X | |

2.2. What will be the sources of the information in the system?

The sources of information contained in the eLaw System are:

- Information collected from regulated individuals and firms being examined or investigated, including applicants for registration, other individuals and firms that provide data or records as required by CFTC regulations, voluntarily provide information or produce records in response to a statutory request, subpoena or discovery request;
- Information collected from third parties for investigations, litigation, court or administrative proceedings, or pursuant to court order or discovery rules;
- Information from or about CFTC employees, volunteers, interns, contractors or consultants collected internally to log activities related to specific matters or projects or collected to comply with a hold on information for purposes of investigations and litigation or potential litigation (a "litigation hold");
- Information about individuals or firms shared from other government agencies or from foreign regulators; and
- Information collected from individuals, firms and industry groups who submit complaints about possible violations of the Commodity Exchange Act, including whistleblower complaints, or provide comments or other input to the CFTC.

2.3. Why will the information be collected, used, disseminated or maintained?

The information is collected, used, maintained and disseminated to enable the CFTC to fulfill its mission of protecting market users and the public from fraud, manipulation, abusive practices and systemic risk related to the trading of commodity futures and derivatives that are subject to the CEA, and to foster open, competitive, and financially sound markets.

Information is used for market oversight, financial supervisory activities, investigations and enforcement, and arbitration, mediation and legal proceedings. The CFTC also uses the information in the eLaw System to properly manage its workforce and comply with laws, memoranda of understanding or other international arrangements to which it is subject. For example, the CFTC uses information to comply with the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and respond to Congressional requests for information, FOIA and Privacy Act requests, and requests for information pursuant to international arrangements.

2.4. How will the information be collected by the Commission?

The CFTC receives information from external sources via encrypted media, secure file transfer protocol (SFTP), attachments to email, other electronic means or, when on paper, by mail, express or other delivery. The CFTC follows applicable government security standards when receiving information forensically. The CFTC also collects and maintains in the eLaw System information from other CFTC internal systems for purposes of litigation holds, internal investigations, or to respond to FOIA, Privacy Act or Congressional requests. CFTC attorneys and investigators also create work product related to particular matters or projects. Also, the CFTC's Comments Online System securely transfers information from its automated comments databases to an eLaw System information review application via an automated programming interface (API).

2.5. Is the system using technologies in ways that the CFTC has not previously employed (e.g., monitoring software)?

No. All software and technologies used are common to the Commission's current infrastructure.

2.6. What specific legal authorities authorize the collection of the information?

Legal authorities for collection include: 5 U.S.C. § 301; Commodity Exchange Act, 7 U.S.C. § 1 et seq. including Section 12(b) of the Commodity Exchange Act, at 7 U.S.C. 16(b)(3), and the rules and regulations promulgated thereunder; Freedom of Information Act, 5 U.S.C. § 552; Privacy Act of 1974, 5 U.S.C. § 552a; Administrative Procedure Act, 5 U.S.C. §§ 551-559; Federal Rules of Civil Procedure, state and federal case law governing the preservation, collection and production of information in connection with actual or anticipated litigation and subpoenas.

3. Data and Records Retention

3.1. For what period of time will data collected by this system be maintained and in what form will the data be retained?

The records will be maintained and then disposed of in accordance with records disposition schedules for the records involved, as approved by the National Archives and Records

Administration (NARA). When information is subject to a litigation hold, the normal retention period is suspended during the hold. When the litigation hold ends, the normal retention schedule applies, and the CFTC works to dispose of information according to the schedule. For preliminary inquiries, investigations and enforcement matters that are closed but that are related to another open on-going matter, CFTC ENF staff associate the closed matter information to the open matter, merging the information. The closed matter information becomes part of the open matter and is retained and disposed of with the open matter.

As to the form of retention, while a matter is on-going, the CFTC generally maintains information in the eLaw System in electronic form, readily accessible to those CFTC staff with a need to know the information. Once CFTC staff close a matter, the CFTC generally places the information onto tape and stores it at the CFTC's secure off-site records storage location.

3.2. What are the plans for destruction and/or disposition of the information?

Once a matter's retention period expires and the matter records are approved for disposal, CFTC staff or contractors under the supervision of CFTC staff permanently dispose of the related information from the eLaw System and/or the tapes.

4. Access to and Sharing of the Data

4.1. Who will have access to the information in the system (internal and external parties), and with whom will the data be shared? If contractors, are the Federal Acquisition Regulations (FAR) clauses included in the contract (24.104 Contract clauses; 52.224-1 Privacy Act Notification; and 52.224-2 Privacy Act)?

The CFTC restricts access to the eLaw System to those employees and contractors who have a need to know the information to perform their job duties. The Contracting Officer Representative (COR) and the relevant business owner share in the responsibility for granting permission to a contractor for that contractor to access the eLaw System. CFTC contractors with access to the eLaw System, including information security specialists, are required to comply with the Privacy Act and CFTC information usage policies and procedures contractually through either FAR terms or other terms and conditions.

The CFTC will only share information contained in the eLaw System with third parties as authorized by law, such as for legal proceedings, when required in litigation or investigation, to other government authorities for official purposes, or to Congress or parties who have made a FOIA request. In its Systems of Records Notices, the CFTC explains these routine uses and sharing of information, for example, stating that the Commission may make certain information available to other government authorities, and use such information for law enforcement, review of legislative and regulatory proposals, regulation of the commodity futures markets, and review of reports and documents filed with the Commission.

4.2. If the data will be shared outside the Commission's network, how will the data be transferred or shared?

When authorized, the CFTC shares information in the eLaw System in paper and electronic form. When sharing confidential information, the CFTC shares such information in a secure manner, e.g., CFTC staff encrypt electronic transfers of sensitive PII through encrypted email, using Secure File Transfer Protocol (SFTP), or providing such information on encrypted

media. When CFTC staff provide information in hard copy, staff use secure means of delivery, e.g., hand delivery.

4.3. If the data will be released to the public, consultants, researchers or other third parties, will it be aggregated or otherwise de-identified (i.e. anonymized)? If yes, please also explain the steps that the Commission will take to aggregate or de-identify the data.

As described in Section 4.1, the information contained in the eLaw System will not be shared outside the Commission unless authorized by law. In certain instances, the CFTC creates high level aggregations of information for publicly available reports, for example, ENF may publish the number of individuals investigated for CEA violations over a particular period of time. In these instances, the CFTC will aggregate the information at a high level to help ensure that the information cannot be re-identified.

4.4 Do the recipients of the aggregated or de-identified information have another dataset, or is there a publicly available dataset that could be used to re-identify Commission information?

In the limited situations when the CFTC may publish aggregate or de-identified information, the CFTC will use aggregation or de-identification strategies designed to prevent re-identification of such information through other available information.

4.5. Describe how the CFTC will track disclosures of information that will be shared with outside entities. The Privacy Act requires that the CFTC record the date, nature, and purpose of each disclosure of a record to any person or to another agency.

Several CFTC offices using eLaw including OGC, ODT, ENF, and the Whistleblower Office track disclosures to outside parties by documenting, among other things, which person or party/organization made the request, the date and nature of the request, the decision made to disclose or not disclose the information and by whom, and any restrictions on further dissemination of the requested information.

4.6. Do other systems share the information or have access to the information in this system? If yes, explain who will be responsible for protecting the privacy rights of the individuals affected by the interface (e.g., System Administrators, System Developers, System Managers)?

Certain eLaw System tools, listed in the Overview above, interface with the CFTC's network administration database, Microsoft Active Directory. ODT network services personnel and administrators are responsible for protecting the interface between these systems to protect the privacy rights of individuals.

5. Notice, Consent and Access for Individuals

5.1. What notice will be provided to individuals about the collection, use, sharing and other processing of their personal data?

The CFTC provides Privacy Act notices or statements to individuals who provide information about themselves at the point of information collection.

For example, CFTC's ENF staff provide the "Statement to Persons Providing Information about Themselves to the Commodity Futures Trading Commission" when asking a person to

provide information about him or herself voluntarily, pursuant to the recordkeeping obligations of a registrant, or pursuant to a subpoena (see Appendix A). The Statement includes the following:

To restrict unauthorized dissemination of personal information, the Privacy Act of 1974, 5 U.S.C. § 552a, limits an agency's ability to disclose such information. Under the Privacy Act, the Commission may disclose protected information as follows: when the individual to whom the record pertains consents in writing; when officers and employees of the Commission need the record to perform their duties; when required by the terms of the Freedom of Information Act, 5 U.S.C. §552; or when disclosure is for a "routine use" (i.e., one compatible with the purpose for which the information was collected).

The CFTC also provides Privacy Act statements and notices to individuals submitting comments on a proposed rulemaking and individuals providing information to the CFTC for financial supervisory purposes.

In some situations, the CFTC may provide a litigation hold notice to its staff when staff need to preserve information, particularly electronically stored information, that may be about themselves or others for potential or pending litigation. eLaw's Information Review System, described above in Overview, processes and stores this type of information until the CFTC closes the matter.

This PIA shall also appear on the Privacy Office's CFTC website.

5.2. What opportunities will exist for an individual to decline to provide information or to consent to particular uses of the information? If opportunities exist, how will this notice be given to the individual and how will an individual grant consent?

When the CFTC requests that an individual provide information voluntarily, the individual may decline to provide information. When CFTC regulations, a court order, subpoena or other legal requirements compel an individual to provide information, the individual may not decline to provide the information (or if the individual declines, the CFTC could request that a court issue an order to compel sharing of the information or take other action to compel sharing).

The notices discussed in Section 5.1 above explain the opportunities an individual may have to decline to provide information or to consent to particular uses of the information. When an individual has a choice about providing information to the CFTC, he or she may grant consent by providing information or expressing consent orally or in writing.

5.3. What procedures will exist to allow individuals to gain access to their information and request amendment/correction, and how will individuals be notified of these procedures?

Individuals submitting comments through www.cftc.gov may view their comments at that website. The CFTC's systems automatically publish comments on the site, as explained in the applicable Privacy Act statement.

Individuals seeking access to records about themselves, or seeking amendment of records about themselves should address a written inquiry to the Office of General Counsel, Paralegal Specialist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Please however note that some of the SORNs that

cover the eLaw System (see Section 7) are “exempted,” meaning the CFTC has exempted them from access, amendment and other provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. § 552a(k)(2) because that component of the eLaw System contains investigatory material compiled for law enforcement purposes.

Also, parties submitting information erroneously in discovery and/or litigation may request a “claw back” of the information supplied, i.e., to have the information returned, sequestered, or destroyed. In this situation, once CFTC staff have returned, sequestered or destroyed the information from the eLaw System, ENF or OGC staff generally notify the party that requested the “claw back.”

6. Maintenance of Controls

6.1. What controls will be in place to prevent the misuse of the information by those having authorized access and to prevent unauthorized access, use or disclosure of the information?

The information in the eLaw System is protected from misuse and unauthorized access through various administrative, technical and physical security measures consistent with statutory and regulatory prohibitions on misusing confidential information. Technical security measures within CFTC include restrictions on computer access to authorized individuals, required use of strong passwords that are frequently changed, use of encryption for certain information types and transfers, and regular review of security procedures and best practices to enhance security. Physical measures include restrictions on building access to authorized individuals and maintenance of records in lockable offices and filing cabinets. For example, all access to the eLaw System is on-site or via a secured virtual private network (VPN) connection. Also, CFTC staff managing the eLaw team regularly review eLaw System audit records for indications of inappropriate or unusual activity.

6.2. While the information is retained in the system, what will the requirements be for determining if the information is still sufficiently accurate, relevant, timely, and complete to ensure fairness in making determinations?

Various administrative, technical and physical security measures are in place to help ensure that the information input into the eLaw System continuously reflects, over time, that information originally submitted into the system.

Each party submitting information to the CFTC that is subsequently imported into the eLaw System is responsible for verifying that it is accurate, relevant, timely and complete. Once information is entered into the eLaw System, CFTC Divisions reviewing such information, including ENF, OGC, DMO, DSIO, DCR and OED are responsible for ensuring fairness in making any determinations based upon that information.

6.3. Will this system provide the capability to identify, locate, and monitor individuals? If yes, explain.

No, the system does not provide the capability to locate or monitor an individual in real-time.

6.4 Does this system comply with FISMA requirements to help ensure that information is appropriately secured?

The CFTC follows the National Institute of Standards and Technology (NIST) Special Publication 800-53, 'Security and Privacy Controls for Federal Information Systems and Organizations' to secure its systems as required by the Federal Information Security Management Act (FISMA). The CFTC ODT Security Team conducted a security assessment of the eLaw System in accordance with the Office of Management and Budget Circular A-130, Appendix III, Security of Federal Automated Information Resources and NIST Special Publication 800-37, Guide for the Security Certification and Accreditation of Federal Information Systems. The eLaw System, if breached, would result in a moderate potential impact on individuals or organizations, as categorized under the Federal Information Processing Standards (FIPS) 199.

6.5. Describe the privacy training provided to users either generally or specifically relevant to the program or system.

All CFTC personnel are subject to CFTC agency-wide policies and procedures for safeguarding PII. They receive annual privacy and security training and annually sign a CFTC "Information Technology Rules of Behavior." Many staff receive additional training focused on their specific job duties, for example, ENF staff and system administrators receive role-based training.

7. Privacy Act

7.1. Will the data in the system be retrieved by a personal identifier in the normal course of business? If yes, explain. If not, can it be retrieved by a personal identifier?

Although CFTC staff may retrieve eLaw System information by keyword or the firm that provided the information, staff frequently search and retrieve by personally identifiable information, such as an individual's name.

7.2 Is the system covered by an existing Privacy Act System of Records Notice ("SORN")? Provide the name of the system and its SORN number, if applicable.

Yes, the information contained within the eLaw System is covered by existing SORNs:

- CFTC-10, Investigatory Records (exempted)
- CFTC-16, Enforcement Case Files
- CFTC-17, Litigation Files – OGC
- CFTC-35, Interoffice and Internet E-mail
- CFTC-39, Freedom of Information Act Requests
- CFTC-40, Privacy Act Requests
- CFTC-45, Comments Online
- CFTC-47, Internal Electronic Collaboration Tools
- CFTC-49, Whistleblower Records (exempted)

8. Privacy Policy

8.1. Confirm that the collection, use and disclosure of the information in this system have been reviewed to ensure consistency with the CFTC's Privacy Policy on www.cftc.gov.

The collection, uses and disclosures of the information have been reviewed and are consistent with the privacy policy on www.cftc.gov.

9. Privacy Risks and Mitigation

9.1. What privacy risks are associated with the collection, use, dissemination and maintenance of the data? How have those risks been mitigated?

While certain information in the eLaw System becomes public, e.g., comments submitted to proposed rulemakings, much of the information collected, used, disseminated and maintained in the eLaw System contains sensitive PII. This includes highly sensitive information provided by individuals, firms and US and foreign regulators for investigatory and enforcement purposes. Some information comes from forensic searches and collections pursuant to court order or discovery rules. Certain information comes from CFTC's own systems, for example, information needed for internal investigations or to respond to requests from Congress, or under FOIA or the Privacy Act.

CFTC staff understand the sensitivity of this information. The CFTC has adopted and maintains strong administrative, technical and physical controls to protect this information. In addition to the controls noted in Section 6.1 above, for example:

- Information in the eLaw System is generally only viewable by specific employees and contractors with a need to know the information, i.e., employees and contractors who require access to perform their job functions, and who are bound by non-disclosure policies and/or agreements.
- The CFTC Office of Inspector General regularly audits the eLaw System.
- CFTC staff requesting access to eLaw System information must receive specific approval from their supervisor, and also often from the business manager in the Division or Office responsible for handling the relevant types of information, to confirm the "need to know."
- CFTC staff who receive requests from third parties for eLaw System information vet those requests with the Division or Office staff who are responsible for handling the information to ensure legal authority to share the information, to secure any transfer of the information and track the disclosure; for example, staff receiving a request for whistleblower information vet such request with the CFTC's Whistleblower Office.
- Several applications within the eLaw System require unique usernames and passwords that are separate from CFTC network usernames and passwords.
- CFTC staff encrypt information approved for and electronically transferred to outside sources either via security software or SFTP in accordance with FIPS 140-2.
- The CFTC trains staff with access to the eLaw System about the statutory and regulatory prohibitions on misuse of confidential information.

APPENDIX A:
**Statement to Persons Providing Information about Themselves to the Commodity
Futures Trading Commission**



U.S. COMMODITY FUTURES TRADING COMMISSION
WASHINGTON, D.C. 20581

Statement to Persons Providing Information about Themselves to
the Commodity Futures Trading Commission

This document sets forth your legal rights and responsibilities as a person requested to supply information about yourself voluntarily, as a person with recordkeeping obligations under the Commodity Exchange Act or CFTC regulations, or as a person directed to provide sworn testimony or produce documents pursuant to a subpoena of the Commodity Futures Trading Commission ("Commission" or "CFTC"). When applicable, this statement also provides important information about the deposition process for persons providing testimony. Unless stated otherwise, the information below applies whether you are providing information voluntarily, pursuant to the recordkeeping obligations of a registrant, or pursuant to subpoena.

FALSE STATEMENTS AND DOCUMENTS

Any person who knowingly and willfully makes false or fraudulent statements, whether under oath or otherwise, or falsifies, conceals or covers up a material fact, or submits any false writing or document, knowing it to contain false, fictitious or fraudulent information, is subject to the criminal penalties set forth in 18 U.S.C. § 1001, which include imprisonment of not more than five years, imposition of a substantial fine under the Federal Sentencing Guidelines, or both.

It shall also be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading, as set forth in Section 6(c)(2) of the Commodity Exchange Act, 7 U.S.C. § 9(2).

PRIVACY ACT

To restrict unauthorized dissemination of personal information, the Privacy Act of 1974, 5 U.S.C. § 552a, limits an agency's ability to disclose such information.¹ Under the Privacy Act, the Commission may disclose protected information as follows: when the individual to whom the record pertains consents in writing; when officers and employees of the Commission need the record to perform their duties; when required by the terms of the Freedom of Information Act, 5 U.S.C. § 552; or when disclosure is for a "routine use" (i.e., one compatible with the purpose for which the information was collected).

¹ Individuals should refer to the full text of the Privacy Act, 5 U.S.C. § 552a, to the Commission's Regulations, 17 C.F.R. § 146, and the CFTC's compilation of System of Record Notices, 76 Fed. Reg. 5974 (Feb. 2, 2011), for a complete list of authorized disclosures and coverage of the Act. Only those disclosures arising most frequently are mentioned in this document.

The Privacy Act also requires that, in certain situations, individuals requested to provide information about themselves receive notice of the following:

1. AUTHORITY FOR SOLICITATION OF INFORMATION.

- a. Recordkeeping for Registered Persons (other than Registered Swap Dealers and Major Swaps Participants). Sections 4f, 4g and 4n of the Commodity Exchange Act, 7 U.S.C. §§ 6f, 6g, 6n, and Commission Regulations 1.12, 1.14, 1.18, 1.25, 1.31, 1.33, 1.34, 1.35, 1.37, 1.55, 3.12, 4.23, 4.33, 32.7 and 33.7, 17 C.F.R. §§ 1.12, 1.14, 1.18, 1.25, 1.31, 1.33, 1.34, 1.35, 1.37, 1.55, 3.12, 4.23, 4.33, 32.7, 33.7, require Registered Persons other than Registered Swap Dealers and Major Swaps Participants to keep records and reports of transactions and positions in commodities for future delivery on any board of trade in the United States or elsewhere. Registered Persons must also keep books and records pertaining to such transactions (including daily trading records, customer records, and information concerning volume of trading) in the form and manner and for such period of time required by the Commission. All such books and records must be made available for inspection by any representative of the Commission or the Department of Justice.
- b. Recordkeeping for Members of a Registered Entity. Commission Regulations 1.31, 1.35 and 1.37, 17 C.F.R. §§ 1.31, 1.35, 1.37, require Members of a Registered Entity to keep records and reports of transactions and positions in commodities for future delivery and options on any board of trade in the United States or elsewhere, as well as cash commodities. Members of a Registered Entity must also keep books and records pertaining to such transactions (including daily trading records, customer records, and information concerning volume of trading) in the form and manner and for such period of time required by the Commission. All such books and records must be made available for inspection upon request by any representative of the Commission or the Department of Justice. Commission Rule 1.40, 17 C.F.R. § 1.40, requires each Member of a Registered Entity to furnish to the Commission certain reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity.
- c. Recordkeeping for Large Traders. Section 4i of the Commodity Exchange Act, 7 U.S.C. § 6i, and Commission Regulations 1.31 and 18.05, 17 C.F.R. §§ 1.31, 18.05, require Large Traders to keep books and records showing, among other things, all details concerning all positions and transactions in the commodity, and in its products and by-products, whether executed through a contract for future delivery, an option contract or a cash contract, and whether such contract is executed through a board of trade, an exempt commercial market, an exempt board of trade, a foreign board of trade or an over-the-counter transaction. All such books and records, and pertinent information concerning the underlying positions, transactions or activities, must be made available for inspection in a form acceptable to the Commission upon request by any representative of the Commission.
- d. Recordkeeping for Registered Swap Dealers and Major Swaps Participants. Sections 4r and 4s of the Commodity Exchange Act, 7 U.S.C. §§ 6r, 6s, and Commission Regulations 1.31, 23.201, 23.202, 23.203, 23.504, 23.505, 23.603, 23.606, 45.2, and 46.2, 17 C.F.R. §§ 1.31, 23.201, 23.202, 23.203, 23.504, 23.505, 23.603, 23.606, 45.2, 46.2, require Swap Dealers ("SDs") and Major Swaps Participants ("MSPs") to keep records of all activities relating to their business with respect to swaps. The records must be readily accessible throughout the life of the swap and for two years following its termination, and retrievable by the SD or MSP within three business days during the remainder of the retention period. Each SD and MSP shall make available for

disclosure to and inspection by the Commission and its prudential regulator, as applicable, all information required by, or related to, the Commodity Exchange Act and Commission Regulations, including: (i) the terms and condition of its swaps; its swaps trading operations, mechanisms, and practices; financial integrity and risk management protections relating to swaps; and (iv) any other information relevant to its trading in swaps. Such information shall be made available promptly, upon request, to Commission staff and the staff of the applicable prudential regulator, at such frequency and in such manner as is set forth in the Commodity Exchange Act, Commission regulations, or the regulations of the applicable prudential regulator.

- e. Recordkeeping by Swaps Participants who are not Registered. Section 4r of the Commodity Exchange Act, 7 U.S.C. § 6r, and Commission Regulations 1.31, 45.2, and 46.2, 17 C.F.R. §§ 1.31, 45.2, 46.2, require non-SD/MSP counterparties to keep records with respect to each swap in which they are a counterparty. Required records must be kept by all swap counterparties throughout the existence of a swap and for five years following termination of the swap. In the case of a non-SD/MSP counterparty, the records must be retrievable by the counterparty within five business days throughout the retention period.
- f. Investigations. Sections 6(c) and 8(a) of the Commodity Exchange Act, 7 U.S.C. §§ 9, 12(a), and Commission Rule 11.2, 17 C.F.R. § 11.2, authorize the Commission to conduct investigations. In the course of any investigation or proceeding, the Commission or an officer designated by the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, require production of documents, and secure voluntary statements or submissions.
- g. Whistleblowers. Section 23 of the Commodity Exchange Act, 7 U.S.C. § 26, and Commission Rule 165, 17 C.F.R. § 165, authorize the Commission to obtain information from persons seeking to participate in the Commission's whistleblower program. Commission staff may request information from prospective whistleblowers to determine whether a tip or complaint relates to a violation of the Commodity Exchange Act, to further an investigation into any such violation, and/or to determine whether the person submitting the information is eligible to participate in the program. The Commission will not disclose information that could reasonably be expected to reveal the identity of a whistleblower, except under the circumstances described in Commission Rule 165.4, 17 C.F.R. § 165.4, and Section 23(h)(2) of the Commodity Exchange Act, 7 U.S.C. § 26(h)(2).

2. PURPOSE OF SOLICITATION OF INFORMATION. The Commission's principal purpose in soliciting information from you is to determine whether any person has violated, is violating, or is about to violate the Commodity Exchange Act or the rules and regulations thereunder. In certain circumstances, the Commission may be obtaining information at the behest of a foreign futures authority under Section 12(f) of the Commodity Exchange Act, 7 U.S.C. § 16(f).

3. EFFECT OF NOT SUPPLYING INFORMATION.

- a. Persons Directed to Provide Testimony or Produce Documents Pursuant to Subpoena. Disclosure of information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have. If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If the Commission obtains such an order and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt.

- b. Persons Requested to Provide Information Voluntarily. There are no direct effects or sanctions for failing to provide any or all of the requested information. If you do provide information, however, you should note the sanctions for false statements and documents described above.
 - c. Registered Persons. Disclosure of requested books or records is mandatory pursuant to the provisions listed in paragraph 1.a. above. Failure to submit or make available for inspection the requested information constitutes a violation of the Commodity Exchange Act and Commission Regulations and may result in any or all of the following under Sections 6(c), 6(d) or 6c of the Commodity Exchange Act, 7 U.S.C. §§ 9, 13b, 13a-1, 15:
 - 1) Institution of an action by the Commission to enjoin such a violation or enforce compliance;
 - 2) Upon proper showing, granting of a temporary or permanent injunction or restraining order without bond;
 - 3) Upon application by the Commission, issuance of writs of mandamus or orders offering like relief commanding compliance with the Commodity Exchange Act;
 - 4) Imposition of a civil penalty of not more than the greater of \$140,000 or such higher inflation adjusted amount as provided by Regulation 143.8, 17 C.F.R. §143.8 or triple the monetary gain to the person for each violation;
 - 5) At the request of Commission, institution of an action by the Attorney General;
 - 6) Prohibition of trading on, or subject to the rules of, a registered entity and require all registered entities to refuse the person all privileges;
 - 7) Suspension or revocation of registration with the Commission;
 - 8) Required payment of restitution to customers for damages proximately caused by violations;
 - 9) Entry of a cease and desist order;
 - 10) Imposition of a restraining order prohibiting you from destroying, altering or disposing of, or refusing to allow authorized representatives of the Commission to inspect, when and as requested, such books, records or other documents; and
 - 11) Imposition of a restraining order prohibiting you from withdrawing, transferring, removing, dissipating or disposing of any funds, assets or other property.
 - d. Whistleblowers. Failure to provide information requested by Commission staff in relation to a whistleblower submission may affect your ability to receive a whistleblower award, or the potential amount of an award.
4. ROUTINE USES OF INFORMATION. The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to

other governmental agencies is, in general, a confidential matter between the Commission and such other government agencies. Information which you provide may be used in the routine operation of the Commission, which includes law enforcement, review of legislative and regulatory proposals, regulation of the commodity futures and swaps markets, and review of reports and documents filed with the Commission.

Specific routine uses include the following:²

- a. Information may be used by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act, or in any other action or proceeding in which the Commission or its staff participates as a party or the Commission participates as *amicus curiae*.
- b. Information may be disclosed to the Department of Justice, the Securities and Exchange Commission, the United States Postal Service, the Internal Revenue Service, the Department of Agriculture, the Office of Personnel Management, and to other Federal, state, local, territorial or tribal law enforcement or regulatory agencies for use in meeting their statutory and regulatory requirements.
- c. Information may be given to any "registered entity," as defined in Section 1a of the Commodity Exchange Act, 7 U.S.C. § 1a, if the Commission has reason to believe that such information will assist the registered entity in carrying out its responsibilities under the Act. Information may also be given to any registered futures association registered under Section 17 of the Commodity Exchange Act, 7 U.S.C. § 21, (e.g., the National Futures Association) to assist it in carrying out its self-regulatory responsibilities under the Act, and to any national securities exchange or national securities association registered with the Securities and Exchange Commission to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*
- d. At the discretion of the Commission staff, information may be given or shown to anyone during the course of a Commission investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matters discussed therein, and those matters appear relevant to the subject of the investigation.
- e. Information may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under section 8 of the Commodity Exchange Act, 7 U.S.C. § 12. Section 8 authorizes publication of such reports but contains restrictions on the publication of certain types of sensitive business information developed during an investigation. In certain contexts, some of this information might be considered personal in nature.
- f. Information may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, or a grant or other benefit by the requesting agency, to the extent that the information may be relevant to the requesting agency's decision on the matter.

² See CFTC compilation of System of Record Notices, including routine uses, at 76 Fed. Reg. 5974 (Feb. 2, 2011).

- g. Information may be disclosed to a prospective employer in response to its request in connection with the hiring or retention of an employee, to the extent that the information is believed to be relevant to the prospective employer's decision in the matter.
- h. Information may be disclosed to any person, pursuant to Section 12(a) of the Commodity Exchange Act, 7 U.S.C. § 16(a), when disclosure will further the policies of that Act or of other provisions of law. Section 12(a) authorizes the Commission to cooperate with various other government authorities or with "any person."
- i. Where information, either alone or in conjunction with other information indicates a violation or potential violation of law – criminal, civil or regulatory in nature – the relevant information may be disclosed to the appropriate Federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.
- j. Information may be disclosed to the General Services Administration, or the National Archives and Records Administration, for the purpose of records management inspections conducted under the authority of 44 U.S.C. §§ 2904 and 2906.
- k. Information may be disclosed to foreign law enforcement, investigatory or administrative authorities in order to comply with requirements set forth in international arrangements, such as memoranda of understanding.
- l. Information may be disclosed to contractors, grantees, volunteers, experts, students and others performing or working on a contract, service, grant, cooperative agreement or job for the Federal government when necessary to accomplish an agency function.
- m. Information may be disclosed to the Merit Systems Protection Board, including the Office of Special Counsel, for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems.
- n. Information may be disclosed to the Department of Justice or in a proceeding before a court, adjudicative body or other administrative body which the agency is authorized to appear, when:
 - i. the agency, or any component thereof; or
 - ii. any employee of the agency in his or her official capacity; or
 - iii. any employee of the agency in his or her official capacity where the Department of Justice or the agency has agreed to represent the employee; or
 - iv. the United States, when the agency determines that litigation is likely to affect the agency or any of its components;

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

- o. Information may be disclosed to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, or at the request of, the individual who is the subject of the record.
- p. Information related to any traders or the amount or quantity of any commodity purchased or sold by such traders may be disclosed to any committee of either House of Congress upon its request, acting within the scope of its jurisdiction, pursuant to the Commodity Exchange Act, including Section 8(e) of such Act, 7 U.S.C. § 12(e), and the rules and regulations promulgated thereunder.
- q. Information may be disclosed to another Federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.
- r. Information may be disclosed to appropriate agencies, entities and individuals when:
 - i. the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
 - ii. the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and
 - iii. the disclosure made to such agencies, entities, and individuals is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

FREEDOM OF INFORMATION ACT

The Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the Commission's rules and regulations pursuant thereto, 17 C.F.R. § 145, generally provide for disclosure of information to the public, unless information falls within a specified exemption. Commission Rule 145.9, 17 C.F.R. § 145.9, establishes the procedure by which you may request that certain sensitive information not be disclosed pursuant to a FOIA request.

INFORMAL PROCEDURE RELATING TO THE RECOMMENDATION OF ENFORCEMENT PROCEEDINGS

As a result of facts gathered in an investigation, the Division of Enforcement may decide to propose an enforcement action against one or more individuals. Under the Informal Procedure Relating to the Recommendation of Enforcement Proceedings,³ the Division of Enforcement, in its discretion, may inform persons to be named in such actions of the nature of the allegations pertaining to them. The Division may also, in its discretion, advise such persons that they may submit a written statement before the consideration by the Commission of any staff recommendation for the commencement of the proceeding. Unless otherwise provided, such written statements must be submitted within 14 days after persons are informed by the Division of Enforcement of the nature of the allegations pertaining to them.

SMALL BUSINESS REGULATORY AND ENFORCEMENT FAIRNESS ACT

Your comments are important. If you wish to comment on the enforcement or regulatory actions of the Commodity Futures Trading Commission, please call the Small Business Liaison in the Office of General Counsel at (202) 418-5120. You may also wish to contact the Small Business and Agriculture Regulatory Enforcement Ombudsman, or one of the 10 Regional Fairness Boards, which were established by the Small Business Regulatory and Enforcement Fairness Act. The Ombudsman and Boards receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to contact the Ombudsman to comment on the enforcement actions of the CFTC, please call 1-888-REG-FAIR (1-888-734-3247).

³ The Informal Procedure has been adopted as Appendix A to Part 11 of the Commission's Regulations, 17 C.F.R. § 11, Appendix A. Appendix A more fully sets forth the substantive and procedural provisions of the Informal Procedure.

TESTIMONY

The following information applies to individuals providing sworn testimony:

1. RECORD. Your testimony will be transcribed by a reporter. If at any time you wish to go off the record, please inform the Commission representative taking your testimony, and that representative will decide whether to grant your request. The reporter will go off the record only at the request of the Commission representative, and not at the direction of you or your counsel. The Commission representative may summarize all off-the-record discussions when you go back on the record.
2. COUNSEL. You may be accompanied, represented and advised by counsel. He or she must be an attorney-at-law admitted to practice before the highest court in any state or territory or the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission. Your counsel may be present and may advise you before, during and after your testimony.⁴

Counsel may also question you briefly at the conclusion of your testimony to clarify any answers, and may make summary notes during your testimony. You may consult with your counsel at any time during the proceedings. If you want to consult privately with counsel, inform the Commission representative taking your testimony and necessary arrangements will be made.

If you are not accompanied by counsel and decide at any time during the proceeding that you wish to be accompanied, represented or advised by counsel, please so advise the Commission representative taking your testimony. The proceeding will then be adjourned to afford you the opportunity to make necessary arrangements.

The Commission may for good cause exclude a particular attorney from further participation in any investigation in which the Commission has found the attorney to have engaged in dilatory, obstructionist or contumacious conduct.

You may be represented by counsel who represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. PERJURY. Any person making false statements under oath during a Commission investigation is subject to the criminal penalties for perjury in 18 U.S.C. § 1621, which provides, in relevant part, that:

Whoever ... having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, ... willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true

⁴ No one other than your attorney and persons providing assistance to your attorney necessary to ensure representation of counsel are entitled to accompany, represent or advise you at the proceeding.

... is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under [title 18] or imprisoned not more than five years, or both.

4. TRANSCRIPT AVAILABILITY. Under Commission Rule 11.7(b), 17 C.F.R. § 11.7(b), any person compelled to submit testimony in the course of an investigatory proceeding is entitled, upon payment of appropriate fees, to procure a copy or transcript of his or her testimony. For good cause, however, a witness may be limited to review of the official copy of his or her testimony. The rights provided by this rule also apply to individuals testifying voluntarily.

To request written authorization to purchase a copy of the transcript of your testimony, send a written request to the Commission representative taking your testimony. Whether or not you wish to purchase a copy of the transcript, a copy will be available for your review at the Commission office most convenient to you. To arrange for such review, contact the Commission representative taking your testimony.

5. FIFTH AMENDMENT. Information you provide may be used against you in any Federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency. In accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, you may refuse to provide information that may tend to incriminate you or otherwise subject you to a fine, penalty or forfeiture, by invoking the Fifth Amendment. An adverse inference may be drawn in a civil or administrative proceeding from your refusal to testify.

6. FAILING TO ANSWER QUESTIONS.

- a. Testimony Pursuant to Subpoena. If testifying pursuant to a subpoena, your disclosure of information to the Commission is mandatory, subject to any legal right or privilege you may have. If you fail to provide requested information, the Commission may seek a court order requiring you to do so. If such an order is obtained, you may be subject to civil and/or criminal sanctions for contempt of court for any continued failure to supply the information.
- b. Voluntary Testimony. If your testimony is not pursuant to a subpoena, your appearance to testify is voluntary. Accordingly, you may leave the proceeding at any time, and you are not required to answer questions. There are no direct sanctions or effects for failing to supply all or part of the information requested by the Commission. If you do provide information, however, you should note the sanctions for false statements and documents described above.

7. FORMAL ORDER AVAILABILITY. If the Commission has issued a formal order of investigation, Commission Rule 11.7(a), 17 C.F.R. § 11.7(a), allows you to examine it at your request during your testimony. To obtain a copy of the formal order, however, you must submit a written request to the Commission representative taking your testimony and demonstrate that your retention of a copy of the formal order "would be consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation." Commission Rule 11.7(a), 17 C.F.R. § 11.7(a).

8. ALLOWABLE FEES AND EXPENSES. The Commission is neither required nor authorized to pay fees and mileage to the witness upon service of a subpoena. 7 U.S.C. §§ 9, 15; 28 U.S.C. § 1825(c); 31 U.S.C. § 3324(b); 17 C.F.R. § 11.4. However, after giving testimony pursuant to a subpoena, the witness may request of the Commission, and

the Commission will pay, the same fees and mileage that are paid to witnesses in the courts of the United States. 17 C.F.R. § 11.4(d). See also 28 U.S.C. § 1821.⁵

- a. Attendance Fees. You are entitled to the prevailing Federal witness fee for each day's attendance, including time needed to travel to and from the location of the proceeding.
- b. Common Carrier Transportation. If traveling by common carrier, you will be paid the actual expenses of transportation between your residence and the location of the proceeding, using the shortest practical route and the most economical rate reasonably available. To ensure the lowest rate, contact the Business Manager, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, for a prepaid travel ticket. Receipts must be submitted with all claims for transportation expenses. If you were supplied with a government-paid airline or train ticket, attach the receipt and/or stub to your claim.
- c. Rental Cars. Reimbursement for the use of a rental car cannot be made unless authorized in advance by the Commission on a signed travel order. The Commission must determine whether use of a rental car is cost beneficial to the government.
- d. Travel by Privately Owned Vehicle (POV). If traveling by POV, you are entitled to a mileage allowance based on a uniform table of distances at a rate established by the General Services Administration and published at 28 U.S.C. § 1821(c)(2). Travel by POV must be approved in writing by Commission staff as advantageous to the government.
- e. Miscellaneous Travel Expenses. You are entitled to reimbursement for the following charges: toll charges on roads, bridges, tunnels and ferries; necessary taxicab fares between places of lodging and carrier terminals; and parking fees. You are not entitled to reimbursement for telephone expenses. Receipts must be submitted to obtain reimbursement for all permitted expenses.
- f. Subsistence Expenses. You are entitled to reimbursement for subsistence expenses when the distance between the place of attendance and your residence precludes daily return travel. Subsistence allowances for witnesses are calculated and paid in the same manner as those paid to Federal employees. For information concerning the maximum daily allowance for reimbursement in your area, contact the Business Manager, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Receipts must be submitted for lodging expenses and all individual expenditures.
- g. Reimbursement. To receive reimbursement for allowable witness fees and expenses, you must complete and return a reimbursement claim form to the Commission within 60 days of the date of your appearance. The claim must include the departure time from your residence and the time you returned to your residence after presenting testimony. In order to receive reimbursement, all receipts specified above must be submitted with the claim. To obtain a reimbursement claim form, contact the Commission representative taking your testimony.

If you do not want to receive any reimbursement for fees and expenses, please:

⁵ The exact amount of the prevailing attendance fee, mileage allowance, and subsistence allowance for Federal witnesses is published at 28 U.S.C. § 1821.

- (1) print your name in Part I of the reimbursement claim (address is not necessary);
- (2) complete Part II, Line 7 with "0";
- (3) sign and date Line 9; and
- (4) return claim.

If you received a government-paid airline or train ticket, please attach the receipt or stub to the claim.

- h. **Travel Order.** In order to ensure that you will be reimbursed for your expenses, it is in your best interest to secure a signed copy of the travel order from the Business Manager, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, prior to testifying, if feasible. The travel order specifies all expenses which have been authorized, including, for example, travel by POV or rental car.