



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection Number 3038-0067, Protection of Consumer Information under the Fair Credit Reporting Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. This notice solicits comments on the collections of information mandated by the Commission’s regulations (Protection of Consumer Information under the Fair Credit Reporting Act).

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by “Part 162 - Protection of Consumer Information under the Fair Credit Reporting Act,” and OMB Control No. 3038-0067 by any of the following methods:

- The Agency’s web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Hand Delivery/Courier*: Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418-5496, email: jchachkin@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act¹ (“PRA”), Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Part 162 - Protection of Consumer Information under the Fair Credit Reporting Act (OMB Control No. 3038-0067). This is a request for an extension of a currently approved information collection.

¹ 44 U.S.C. 3501 *et seq.*

Abstract: On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² Title X of the Dodd-Frank Act, which is titled the Consumer Financial Protection Act of 2010 (“CFP Act”), amends a number of federal consumer protection laws enacted prior to the Dodd-Frank Act including, in relevant part, the Fair Credit Reporting Act (“FCRA”)³ and the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”).⁴ Specifically, Section 1088 of the CFP Act sets out certain amendments to the FCRA and the FACT Act directing the Commission to promulgate regulations that are intended to provide privacy protections to certain consumer information held by an entity that is subject to the jurisdiction of the Commission.

Section 1088 amends section 214(b) of the FACT Act—which added section 624 to the FCRA in 2003—and directs the Commission to implement the provisions of section 624 of the FCRA with respect to persons that are subject to the Commission’s enforcement jurisdiction. Section 624 of the FCRA gives a consumer the right to block affiliates of an entity subject to the Commission’s jurisdiction from using certain information obtained from such entity to make solicitations to that consumer (hereinafter referred to as the “affiliate marketing rules”).⁵ Under the affiliate marketing rules, the entities covered by the regulations are expected to prepare and provide clear, conspicuous and concise opt-out notices to any consumers with whom such entities have a pre-existing business relationship. A covered entity only has to provide an opt-out notice to

² Pub. L. No. 111-203, 124 Stat. 1376 (2010).

³ 15 U.S.C. 1681-1681x.

⁴ Pub. L. No. 108-159, 117 Stat. 1952, 1980 (2003).

⁵ The affiliate marketing rules are found in part 162, subpart A (Business Affiliate Marketing Rules) of the CFTC’s regulations. 17 CFR part 162, subpart A.

the extent that an affiliate of the covered entity plans to make a solicitation to any of the covered entity's consumers. The purpose of the opt-out notice is to provide consumers with the ability to prohibit marketing solicitations from affiliate businesses that do not have a pre-existing business relationship with the consumers, but that do have access to such consumers' nonpublic, personal information. A covered entity is required to send opt-out notices at the maximum of once every five years.

Section 1088 of the CFP Act also amends section 628 of the FCRA and mandates that the Commission implement regulations requiring persons subject to the Commission's jurisdiction who possess or maintain consumer report information in connection with their business activities to properly dispose of that information (hereinafter referred to as the "disposal rules").⁶ Under the disposal rules, the entities covered by the regulations are expected to develop and implement a written disposal plan with respect to any consumer information within such entities' possession. The regulations provide that a covered entity develop a written disposal plan that is tailored to the size and complexity of such entity's business. The purpose of the written disposal plan is to establish a formal plan for the disposal of nonpublic, consumer information, which otherwise could be illegally confiscated and used by unauthorized third parties. Under the rules, a covered entity is required to develop a written disposal plan only once, but may subsequently amend such plan from time to time.

In addition, Section 1088 of the CFP Act amended the FCRA by adding the CFTC and the Securities and Exchange Commission ("SEC," together with the CFTC, the "Commissions") to the list of federal agencies required to jointly prescribe and

⁶ The disposal rules are found in part 162, subpart B (Disposal Rules) of the CFTC's regulations. 17 CFR part 162, subpart B.

enforce identity theft red flags rules and guidelines and card issuer rules. Thus, the Dodd-Frank Act provides for the transfer of rulemaking responsibility and enforcement authority to the CFTC and SEC with respect to the entities under their respective jurisdiction. Accordingly, the Commissions have issued final rules and guidelines (hereinafter referred to as the “identity theft rules”)⁷ to implement new statutory provisions enacted by the CFP Act that amend section 615(e) of the FCRA and direct the Commissions to prescribe rules requiring entities that are subject to the Commissions’ jurisdiction to address identity theft. Under the identity theft rules, entities covered by the regulation are required to develop and implement reasonable policies and procedures to identify, detect, and respond to relevant red flags for identity theft that are appropriate to the size and complexity of such entity’s business and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes.⁸ They are also required to provide for the continued administration of identity theft policies and procedures.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

⁷ The CFTC’s identity theft rules are found in part 162, subpart C (Identity Theft Red Flags) of the CFTC’s regulations. 17 CFR part 162, subpart C.

⁸ The CFTC understands that CFTC-regulated entities generally do not issue credit or debit cards, but instead may partner with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the CFTC, are already subject to substantially similar change of address obligations pursuant to other federal regulators’ identity theft red flags rules. Therefore, the CFTC does not expect that any CFTC-regulated entities will be subject to the related information collection requirements under the CFTC’s identity theft rules.

- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.⁹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

⁹ 17 CFR 145.9.

Burden Statement: The Commission is revising its burden estimate for this collection to reflect its estimate of the current number of CFTC registrants subject to the requirements of part 162 regulations. In addition, this burden estimate reflects the total burden hours from the affiliate marketing rules (subpart A), the disposal rules (subpart B), and the identity theft rules (subpart C)—the first two categories of which were inadvertently omitted from previous renewals. Thus the current renewal aims to correct past omissions by including burden calculations from all three categories under part 162.

Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 4,488.

Estimated Average Burden Hours Per Respondent: 13.25.¹⁰

Estimated Total Annual Burden Hours: 59,459.

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 23, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

¹⁰ This number reflects the average aggregate burden hours, per respondent, in response to: (a) Disclosure (1 hr.) and recordkeeping requirements (3.5 hrs) under the affiliate marketing rules, (b) recordkeeping requirements under the disposal rules (5.9 hrs), and (c) recordkeeping requirements under the identity theft rules (2.85 hrs).

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