



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. 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 who 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 the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §753, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 9, 15.

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(b), to the Commission's rules, 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. Sections 4f, 4g, and 4n of the Commodity Exchange Act, 7 U.S.C. § 6f, 6g, 6n, and Commission Rules 1.12, 1.18, 1.31, 1.33, 1.34, 1.35, 1.37, 1.55, 3.12, 4.23, 4.32, 32.7, and 33.7, 17 C.F.R. §§ 1.12, 1.18, 1.31, 1.33, 1.34, 1.35, 1.37, 1.55, 3.12, 4.23, 4.32, 32.7, 33.7, require Registered Persons 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 Department of Justice.
- b. Recordkeeping for Members of a Registered Entity. Commission Rules 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 Rules 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. Investigations. Sections 6(c) and 8(a) of the Commodity Exchange Act, 7 U. S. C. §§ 15, 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.



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 § 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. 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 6c or 6(c) of the Commodity Exchange Act, 7 U.S.C. §§ 13a-1, 9:
 - 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 \$110,000 for each violation or such higher inflation adjusted amount as provided by Regulation 143.8, 17 C.P.R. §143.8;
 - 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 contract market;
 - 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.
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 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. 1, et seq. ("the Act"), 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 Act (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.

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



- 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.
- 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 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 the National Archives and Records Administration for the purpose of records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.
- l. 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.
- m. 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.
- n. 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.
- o. 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.
- p. 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.



- q. 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, 7 U.S.C. 1 et seq., including Section 8(e) of such Act at 7 U.S.C. 12, and the rules and regulations promulgated thereunder.
- r. 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.
- s. 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 pursuant thereto, 17 C.F.R. Part 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

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



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 (1-888-7343247).