

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Austin, Horseshoe Bay Resort Airport, TX [Amended]

Horseshoe Bay Resort Airport, TX
(Lat. 30°31'37" N., long. 98°21'32" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Horseshoe Bay Resort Airport.

Issued in Fort Worth, TX, on October 19, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–27258 Filed 10–26–10; 8:45 am]

BILLING CODE 4901–13–P

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 160**

RIN 3038–AD13

Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend its rules under part 160 of its Regulations to implement new statutory provisions enacted by Titles VII and X of the Dodd-

Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Section 1093 of the Dodd-Frank Act provides for certain amendments to Title V of the Gramm-Leach-Bliley Act (“GLB Act”)—which sets forth certain protections for the privacy of consumer financial information—affirming the Commission’s jurisdiction in this area. This proposal broadens the scope of Part 160 to cover two new entities created by Title VII of the Dodd-Frank Act: Swap dealers and major swap participants. In addition, the Commission proposes to rename Part 160 as “Privacy of Consumer Financial Information under the Gramm-Leach-Bliley Act” to harmonize the title of this part with other parts of the Commission’s Regulations.

DATES: Comments must be received on or before December 27, 2010.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD13, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* infoprivacy@cftc.gov.
- *Mail:* David A. Stawick, 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.

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>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, a petition for confidential treatment of the exempt information may be submitted according to the established rules in section 145.9 of the Commission’s Regulations.¹

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 rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and other applicable laws,

¹ 17 CFR 145.9.

and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Carl E. Kennedy, Counsel, Office of General Counsel, (202) 418–6625, e-mail: c_kennedy@cftc.gov, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:**I. Background**

On July 21, 2010, President Obama signed the “Dodd-Frank Wall Street Reform and Consumer Protection Act” (“Dodd-Frank Act”).² Title VII of the Dodd-Frank Act,³ which substantially amended the Commodity Exchange Act (“CEA”),⁴ established a comprehensive new regulatory framework for swaps and security-based swaps. It lowers risk in the financial system, increases transparency, and promotes market integrity by, among other things: (1) Providing for the comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized products; (3) creating a robust real-time reporting regime; and (4) enhancing the Commission’s enforcement authorities.

Title X of the Dodd-Frank Act creates a new consumer financial services regulator, the Bureau of Consumer Financial Protection (the “Bureau”), that will assume most of the consumer financial services regulatory responsibilities currently spread among numerous agencies. More specifically, the Dodd-Frank Act removes from the jurisdiction of the Federal Trade Commission (“FTC”) its rulemaking and other authorities granted pursuant to Federal consumer law, and cedes that authority to the Bureau. In addition, section 1093 of the Dodd-Frank Act amends Title V of the GLB Act (15 U.S.C. 6801 *et seq.*), to, *inter alia*, reaffirm the Commission’s authority to promulgate regulations to require entities that are subject to the Commission’s jurisdiction to provide certain privacy protections for consumer financial information. Specifically, section 1093 of the Dodd-Frank Act amends section 504 of the GLB Act by providing that “the [CFTC] shall have the authority to prescribe such regulations as may be necessary to carry out the purposes of [Title V of the GLB

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov>.

³ Under Section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

⁴ 7 U.S.C. 1 *et seq.*

Act] with respect to any financial institutions and *other persons subject to the jurisdiction of the [CFTC]* under section 5g of the [CEA].” (Emphasis added.)

As enacted, Title V of the GLB Act⁵ (“Title V”), *inter alia*, limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution’s privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties.⁶

In 2000, the Commodity Futures Modernization Act of 2000 (“CFMA”) created section 5g of the CEA, providing that the Commission be treated as a Federal functional regulator within the meaning of Title V.⁷ Section 5g also granted the Commission the authority to adopt rules that establish appropriate standards for financial institutions subject to its jurisdiction to safeguard customer records and information. Section 5g provides that the following entities are subject to the Commission’s jurisdiction for the purposes of Title V: Futures commission merchants (“FCMs”), commodity trading advisors (“CTAs”), commodity pool operators (“CPOs”), and introducing brokers (“IBs”) (collectively, “CFTC registrants”).

The Commission’s consumer information privacy rules are set out in Part 160 of the Commission’s regulations, which require CFTC registrants to adopt appropriate policies and procedures that address safeguards to customer records and information, including initial and annual privacy notice requirements, opt-out provisions to the extent that these registrants wish to share such records and information with non-affiliates and other measures to protect nonpublic consumer information. The protections provided in Part 160 inure to the benefit of individual consumers.⁸ The

Commission recently amended the scope of Part 160 and the definition of “financial institution” to include retail foreign exchange dealers (“RFEDs”).⁹

Title VII of the Dodd-Frank Act creates two new entities over which the Commission has jurisdiction: Swap dealers (“SDs”) and major swap participants (“MSPs”).¹⁰ The Commission proposes in this rulemaking to: (1) Expand the scope of Part 160 of its Regulations to apply to SDs and MSPs; (2) in accordance with the transfer of authority in Title X, changing all references in Part 160 from the FTC to the Bureau; and (3) rename Part 160 to “Privacy of Consumer Financial Information under the Gramm-Leach-Bliley Act” to harmonize the title of part 160 with the new part of the Commission’s Regulations, which provide protections to certain customer information under the FCRA.

The Commission requests comment on all aspects of these conforming amendments, as well as comment on specific provisions and issues highlighted in the section-by-section analysis below.

II. Section-by-Section Analysis

A. Specific Section Amendments

Renaming Part 160

Another provision in Title X of the Dodd-Frank Act, section 1088, provides that the Commission promulgate regulations under various sections of the Fair Credit Reporting Act, 15 U.S.C. 1608 *et seq.* Similar to Title V of the GLB Act, the FCRA sets forth safeguards for the protection of a broader range of consumer information. Under a separate rulemaking, the Commission proposes to create a new part in its Regulations to provide protections under the FCRA. To harmonize the title of Part 160 with the new part being adopted by the Commission promulgated under Title X of the Dodd-Frank Act, the Commission proposes to rename Part 160 as “Privacy

of Consumer Financial Information under the Gramm-Leach-Bliley Act.”¹¹

Regulation 160.1(b) Scope

Regulation 160.1(b) sets out the scope of the Commission’s rules and identifies the financial institutions covered by the rules that include CFTC registrants regardless whether they are required to register with the Commission. The Commission proposes to add SDs and MSPs to the scope of Part 160 (and to the definition of “financial institution” therein) because, for example, these new entities may enter into swap transactions with individuals who qualify as “eligible contract participants”.¹² Section 1a(18)(A)(xi) defines “eligible contact participant” to include any individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of either \$10,000,000 or, if certain other qualifications are met, \$5,000,000. As a result of this addition, SDs and MSPs that transact swaps with individuals would have to comply with the various provisions under Part 160, including requirements to protect the nonpublic personal information of these individuals. Of course, if any SD or MSP has no business interactions with natural persons, no obligations would arise under this proposal. This proposal would ensure that all CFTC registrants that enter into swap transactions with natural persons would provide privacy protections to any nonpublic, consumer information.

Section 160.3—Definitions

Since the scope of the proposed regulations would extend to SDs and MSPs, the Commission proposes to amend section 160.3 to add the definitions of SDs and MSPs to the list of defined terms under section 160.3. Specifically, the Commission proposes to define “major swap participant” to have the same meaning as in section 1a(33) of the CEA, as further defined by the Commission’s Regulations, and includes any person registered as such thereunder. The Commission proposes to define “swap dealer” to have the same meaning as in section 1a(49) of the CEA, as further defined by the Commission’s Regulations, and includes any person registered as such thereunder. There are existing definitions and related

⁵ Public Law 106–102, 113 Stat. 1338 (1999) (codified in scattered sections of 12 U.S.C. and 15 U.S.C.).

⁶ GLB Act sections 501–510, 15 U.S.C. 6801–6809.

⁷ The other agencies subject to GLB Act jurisdiction include the Office of the Comptroller of the Currency (“OCC”); Board of Governors of the Federal Reserve System (“Board”); Federal Deposit Insurance Corporation (“FDIC”); Office of Thrift Supervision (“OTS”); National Credit Union Administration (“NCUA”); FTC; and Securities and Exchange Commission (“SEC”).

⁸ Section 160.3(h)(1) of the Commission’s Regulations defines the term consumer to mean “an individual who obtains or has obtained a financial product or service from [a financial institution] that is to be used primarily for personal, family or

household purposes, or that individual’s legal representative.”

⁹ See 75 FR 55410, 55450 (Sept. 10, 2010).

¹⁰ The terms “SD” and “MSP” as used in this proposed regulation refer to the statutory definitions of such terms as defined in Title VII of the Dodd-Frank Act, and as may be further defined by the Commission in a future rulemaking. See section 721(b) of the Dodd-Frank Act, which provides that the Commission has the authority to adopt rules further defining any term in an amendment to the CEA in the Dodd-Frank Act. See also section 721(c) which provides that the Commission is required to adopt a rule to further define, *inter alia*, the terms “swap dealer” and “major swap participant” to include transactions and entities that have been structured to evade provisions in the Dodd-Frank Act.

¹¹ Section 1088 of the Dodd-Frank Act provides the CFTC with authority to implement regulations under sections 624 and 628 of the FCRA.

¹² New section 2(e) of the CEA—as enacted under 723(a)(2) of the Dodd-Frank Act—provides that it is “unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5 [of the CEA].”

provisions under Part 160 that must be amended to include these new registrants. Specifically, the definitions of “financial institution”, “affiliate”, and “you” must be amended to include swap dealers and major swap participants.

Section 160.15—Other Exceptions to Notice and Opt Out Requirements

As noted above, Title X of the Dodd-Frank Act transferred certain authority from the FTC to the Bureau. Accordingly, we changed the reference from the FTC to the Bureau in section 160.15 to reflect that the Bureau is now a Federal functional regulator.

Section 160.17(b)—Relation to State Laws

As a result of the creation of the Bureau and the transfer of certain authority from the FTC to the Bureau, the Commission proposes to amend paragraph (b) by replacing it with the language similar to section 1041(a)(2) of the Dodd-Frank Act. This section clarifies the relationship of Title V to state consumer protection laws. Specifically, section 1041(a)(2) provides, “For the purposes of this section, a [State] statute, regulation, order, or interpretation * * * is not inconsistent with the provisions of [Title V] if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under [Title V]. A determination regarding whether a [State] statute, regulation, order, or interpretation * * * is inconsistent with the provisions of [Title V] may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.”

Section 160.30—Procedures To Safeguard Customer Records and Information

Section 160.30 requires CFTC registrants to adopt policies and procedures that, among other things, address administrative, technical and physical safeguards for the protection of customer records and information. The Commission proposes to amend the introductory sentence of section 160.30 to add SDs and MSPs to the list of CFTC registrants that must comply with this requirement.

B. Effective Date

Pursuant to section 1100H of the Dodd-Frank Act, the Commission proposes to make the proposed regulations—the affiliate marketing rules and the disposal rules—become effective on the “designated transfer date” of authority from various Federal

agencies to the Bureau. Section 1062 of the Dodd-Frank Act provides that the “designated transfer date” is a date designated in the **Federal Register** no later than 60 days after the enactment of the Dodd-Frank Act by the Secretary of the Treasury, the Chairman of the Board of Governors, the Chairman of the Federal Trade Commission, and several other Federal agencies.¹³ On September 20, 2010, these Federal agencies issued a notice designating July 21, 2011 as the designated transfer date.¹⁴ As a result, the Commission proposes to adopt the affiliate marketing rules and the disposal rules on that date.

III. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the CEA¹⁵ requires the Commission to consider the costs and benefits of its actions before issuing an order under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of amendments to regulations to determine whether the benefits of the amendments outweigh its costs; rather, it requires that the Commission “consider” the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular amendment is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The proposed conforming rule amendments would broaden the scope of Part 160 to cover SDs and MSPs.

With respect to costs, the Commission has determined that the proposed conforming amendments are necessary to implement various consumer financial information privacy provisions as they relate to SDs and MSPs, by adding these new registrants to the list

of financial institutions responsible for complying with its provisions under part 160 of its Regulations.

The Commission has determined that market participants and the public may be harmed if these new registrants are not added to part 160. The notice requirements under part 160 were established to protect individual customers who do business with CFTC registrants. There is no reason why SDs and MSPs should be excluded from these requirements to the extent that they conduct business with a natural person. With respect to benefits, the Commission has determined that requiring financial institutions to protect the privacy of nonpublic personal information about consumers is a benefit that must be maintained given the risks to the public if it is not, given the minor costs to the financial institutions affected by the conforming amendments.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act (“PRA”) an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.¹⁶ The proposed amendments to Part 160 of the Commission’s Regulations include a collection of information within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, together with a request for approval of a revision to the Commission’s currently approved collection associated with part 160. The title of the collection of information to be revised is “Privacy of Consumer Financial Information,” OMB Control Number 3038–0055. If approved, the provision of notice to this revised collection of information would be mandatory for SDs and MSPs.

1. Information Provided by Reporting Entities

The proposed rule would require SDs and MSPs to provide initial and annual privacy and opt-out notices to all customers that are natural persons. It is not currently known how many SDs and MSPs will be required to register as such with the Commission, and this will

¹³ The heads of the other Federal agencies are: The Comptroller of the Currency; the Director of the Office of Thrift Supervision; the Secretary of the Department of Housing and Urban Development; the Director of the Office of Management and Budget; the Chairman of the National Credit Union Administration Board; and the Chairperson of the Corporation.

¹⁴ See 75 FR 57252–02 (Sept. 20, 2010).

¹⁵ 7 U.S.C. 19(a).

¹⁶ 44 U.S.C. 3501 *et seq.*

not be known to the Commission until registration requirements for these entities become effective after July 15, 2011, the date on which the Dodd-Frank Act becomes effective.

Nonetheless, for purposes of calculating PRA burden, the Commission estimates that there will be approximately 300 SDs and MSPs who would be required to provide notices under part 160 on an initial and then on an annual basis.¹⁷ It is anticipated that most SDs and MSPs will not transact business with a significant number of natural persons, causing the Commission to estimate that each SD and MSP will issue an average of 20 notices per year. As previously estimated, the average time per notice will be .24 hours. This will result in an annual aggregate of 1,440 burden hours.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395-6566 or by e-mail at OIRASubmissions@omb.eop.gov. Please provide the Commission with a copy of submitted comments so that they can be summarized and addressed in the final rule. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release.

¹⁷ While staff believes that there may likely be approximately 200 swap dealers, we have taken a conservative approach in estimating that there will be 250 swap dealers for PRA purposes.

Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether their proposed regulations will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.¹⁸ The Commission's proposed regulations now will affect SDs and MSPs, in addition to the CFTC registrants that are currently subject to Commission's Regulations under Part 160. These regulations require periodic notice to be provided to individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions, and may be satisfied by the use of a model notice developed by the Commission and other regulatory agencies to minimize the burden of compliance. Accordingly, the Commission has determined that the obligations created by these rule amendments will not create a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 160

Brokers, Dealers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

For the reasons articulated in the preamble, the Commission proposes to amend Part 160 of Title 17 of the Code of Federal Regulations as follows:

1. The heading of part 160 is revised to read as follows:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION UNDER TITLE V OF THE GRAMM-LEACH-BLILEY ACT

2. The authority citation for part 160 is revised to read as follows:

Authority: 7 U.S.C. 7b-2 and 12a(5); 15 U.S.C 6801, *et seq.*, and title X, sec. 1093, Pub. L. 111-203, 124 Stat. 1376.

3. Amend § 160.1 by revising paragraph (b) to read as follows:

§ 160.1 Purpose and scope.

* * * * *

¹⁸ 5 U.S.C. 601 *et seq.*

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to all futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers that are subject to the jurisdiction of the Commission, regardless whether they are required to register with the Commission. These entities are hereinafter referred to in this part as "you." This part does not apply to foreign (non-resident) futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers that are not registered with the Commission.

* * * * *

4. Amend § 160.3 as follows:

a. Revise paragraphs (a), (n)(1)(i), (n)(2)(i), and (o)(1)(i);

b. Redesignating paragraphs (w) and (x) as paragraphs (y) and (z);

c. Redesignating paragraphs (s) through (v) as paragraphs (t) through (w);

d. Adding new paragraphs (s) and (x); and

e. Revising newly designated paragraphs (y)(4) and (5) and adding new paragraphs (y)(6) and (7) to read as follows:

§ 160.3 Definitions.

* * * * *

(a) *Affiliate* of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer means any company that controls, is controlled by, or is under common control with a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer that is subject to the jurisdiction of the Commission. In addition, a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer subject to the jurisdiction of the Commission will

be deemed an affiliate of a company for purposes of this part if:

(1) That company is regulated under Title V of the GLB Act by the Bureau of Consumer Financial Protection or by a Federal functional regulator other than the Commission; and

(2) Rules adopted by the Bureau of Consumer Financial Protection or another Federal functional regulator under Title V of the GLB Act treat the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer as an affiliate of that company.

* * * * *

(n)(1) * * *

(i) Any futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer that is registered with the Commission as such or is otherwise subject to the Commission's jurisdiction; and

(ii) * * *

(2) * * *.

(i) Any person or entity, other than a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer that, with respect to any financial activity, is subject to the jurisdiction of the Commission under the Act.

* * * * *

(o)(1) * * *.

(i) Any product or service that a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer could offer that is subject to the Commission's jurisdiction; and

* * * * *

(s) *Major swap participant.* The term "major swap participant" has the same meaning as in section 1a(33) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as may be further defined by this title, and includes any person registered as such thereunder.

* * * * *

(x) *Swap dealer.* The term "swap dealer" has the same meaning as in section 1a(49) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as may be further defined by this title, and includes any person registered as such thereunder.

(y) * * *

- (4) Any commodity pool operator;
(5) Any introducing broker;
(6) Any major swap participant; and

(7) Any swap dealer subject to the jurisdiction of the Commission.

* * * * *

5. Amend § 160.15 by revising paragraph (a)(4) to read as follows:

§ 160.15 Other exceptions to notice and opt out requirements.

(a) * * *

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Bureau of Consumer Financial Protection), self-regulatory organizations, or for an investigation on a matter related to public safety;

* * * * *

6. Amend § 160.17 by revising paragraph (b) to read as follows:

§ 160.17 Relation to state laws.

* * * * *

(b) Greater protection under state law. For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords to any consumer is greater than the protection provided under this part. A determination regarding whether a state statute, regulation, order, or interpretation is inconsistent with the provisions of this part may be made by the Bureau of Consumer Financial Protection, after consultation with the Commission, on its own motion or in response to a nonfrivolous petition initiated by any interested person.

7. Revise § 160.30 to read as follows:

§ 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, and swap dealer subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information.

By the Commission.

Dated: October 19, 2010.

David A. Stawick,
Secretary.

Statement of Chairman Gary Gensler
Privacy of Consumer Financial
Information; Conforming Amendments
Under Dodd-Frank Act

October 19, 2010

I support today's Commission vote on the notice of public rulemaking, which expands the scope of the Commission's existing protections afforded to consumers' information to two new entities created by the Dodd-Frank Act. The proposed rulemaking expands the Commission's Part 160 rules to customers of swap dealers and major swap participants. Part 160 includes the Commission's existing privacy rules for consumers.

[FR Doc. 2010-26912 Filed 10-26-10; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 162

RIN Number 3038-AD12

Business Affiliate Marketing and Disposal of Consumer Information Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing regulations to implement new statutory provisions enacted by Title X of the "Dodd-Frank Wall Street Reform and Consumer Protection Act" ("Dodd-Frank Act"). These proposed regulations apply to futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, swap dealers and major swap participants (collectively, "CFTC registrants"). The Dodd-Frank Act provides the CFTC with authority to implement regulations under sections 624 and 628 of the Fair Credit Reporting Act ("FCRA"). The proposed regulations implementing section 624 of the FCRA require CFTC registrants to provide consumers with the opportunity to prohibit affiliates from using certain information to make marketing solicitations to consumers. The proposed regulations implementing section 628 of the FCRA require CFTC registrants that possess or maintain consumer report information in connection with their business activities