



Commodity Futures Trading Commission

Office of Public Affairs

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Fair Credit Reporting Act Proposed Rulemaking Q & A

What is the goal of the proposed rulemaking?

The notice of rulemaking proposes to create a regime for a consumer to prohibit entities that are subject to CFTC jurisdiction from using certain consumer information obtained from an affiliate to make solicitations to that consumer for marketing purposes. In addition, the notice requires entities subject to CFTC jurisdiction that possess or maintain consumer information in connection with their business activities to develop and implement a written program and procedures for the proper disposal of such information.

Which entities are subject to the proposed regulations?

The proposed regulations will apply to futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, swap dealers and major swap participants, regardless of whether they are required to register with the CFTC..

Is the proposal similar to rules promulgated by other federal agencies?

The Fair Credit Reporting Act required various federal agencies to issue regulations providing protections to consumer information held by entities that are subject to Commission jurisdiction. In particular, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission and the Federal Trade Commission issued final rules implementing these sections of the FCRA. The CFTC is now proposing to adopt similar rules to the final rules adopted by these federal agencies, to the extent possible, to ensure consistency and comparability.

Under what conditions can an entity subject to CFTC jurisdiction make solicitations to a consumer based on information received from an affiliate:

An entity subject to CFTC jurisdiction can make solicitations to a consumer based on that consumer's information if:

- (1) The consumer is given clear, conspicuous and concise notice;
- (2) The consumer is given a reasonable opportunity to opt out of such use of the information; and
- (3) The consumer does not opt out.

If a consumer elects to opt-out of receiving marketing solicitations, how long would the election period last?

A consumer's opt-out election would be effective for a period of at least five years. If an entity wishes to avoid the cost and burden of tracking five-year consumer opt-out periods with varying start and end dates, the entity may chose to treat a consumer's opt-out election as effective for a period longer than five years, including indefinitely.

What constitutes making a solicitation?

Under the proposed regulations, a solicitation means the marketing of a financial product or service initiated by an entity to a particular consumer that is based on certain information communicated by its affiliate. The communication to the consumer must be intended to encourage the consumer to purchase the entity's financial

products or services. A communication, such as a telemarketing solicitation, direct mail, or e-mail, is a solicitation if it is directed to a specific consumer based on the consumer's personal information. Solicitation does not, however, include communications that are directed at the general public without regard to the consumer's personal information, even if those communications are intended to encourage consumers to purchase financial products and services from the entity initiating the communications.

What are the proper methods of disposal of consumer information under the proposed regulations?

Under the proposed regulations, "reasonable" disposal measures include:

- Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed;
- Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed; and
- After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of consumer information in a manner that is consistent with this rule.