

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038-AE80

Privacy of Consumer Financial Information - Amendment to Conform Regulations to the Fixing America's Surface Transportation Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is adopting amendments to revise its regulations requiring covered persons to provide annual privacy notices to customers. The revisions implement the Fixing America's Surface Transportation Act's (“FAST Act”) December 2015 statutory amendment to the Gramm-Leach-Bliley Act (“GLB Act”) by providing an exception to the annual notice requirement under certain conditions.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

Title V, Subtitle A of the GLB Act¹ (“Title V”) mandates that financial institutions provide their consumers with whom they have customer relationships (“customers”) with annual notices regarding those institutions’ privacy policies and practices.² Further, subject to certain exceptions, if financial institutions share nonpublic personal information with particular types of third parties, the financial institutions must also provide their consumers with an opportunity to opt out of the sharing.³ The Commission and entities subject to its jurisdiction were originally excluded from Title V’s coverage.⁴ However, section 124 of the Commodity Futures Modernization Act of 2000⁵ amended the Commodity Exchange Act (“CEA”) to add section 5g,⁶ providing that futures commission merchants (“FCMs”), commodity trading advisors (“CTAs”), commodity pool operators (“CPOs”), and introducing brokers (“IBs”)⁷ fall under the requirements of Title V and requiring the Commission to prescribe regulations in furtherance of Title V. Thus, in 2001, the Commission promulgated part 160 of its regulations to establish standards relating to Title V.⁸

¹ Title V, Subtitle A, Pub. L. 106–102, 113 Stat. 1338 (1999), as codified at 15 U.S.C. 6801-6809.

² See 15 U.S.C. 6803.

³ See 15 U.S.C. 6802(b). See also 15 U.S.C. 6809(4)(A) (defining “nonpublic personal information”).

⁴ 15 U.S.C. 6809(3)(B).

⁵ Section 124, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

⁶ 7 U.S.C. 7b-2.

⁷ For the definitions of these intermediary categories, see section 1a of the CEA and § 1.3 of the Commission’s regulations. 7 U.S.C. 1a and 17 CFR 1.3.

⁸ Privacy of Customer Information, 66 FR 21235 (April 27, 2001). The Commission later modified its part 160 regulations to apply them to retail foreign exchange dealers (“RFEDs”), swap dealers (“SDs”), and major swap participants (“MSPs”). Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55409 (Sept. 10, 2010) for RFEDs, and Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act, 76 FR 43874 (July 22, 2011) for SDs and MSPs. For the definition of RFED, see § 5.1(h). 17 CFR 5.1(h). For the definitions of SD and MSP, see section 1a of the CEA and § 1.3 of the Commission’s regulations. 7 U.S.C. 1a and 17 CFR 1.3.

Consistent with Title V, part 160 requires that, generally, all FCMs, RFEDs, CTAs, CPOs, IBs, MSPs, and SDs that are subject to the jurisdiction of the Commission, regardless of whether they are required to register with the Commission (“Covered Persons”), provide a clear and conspicuous notice to customers that accurately reflects their privacy policies and practices not less than annually during the life of the customer relationship.⁹

On December 4, 2015, Congress amended Title V as part of the FAST Act.¹⁰ This amendment, titled “Eliminate Privacy Notice Confusion,” added section 503(f) to the GLB Act to limit the circumstances under which a financial institution must provide a privacy notice to its customers on an annual basis.¹¹ In particular, under section 503(f), a financial institution is excepted from the requirement to send privacy notices on an annual basis if that financial institution (1) does not share nonpublic personal information except as described in certain specified exceptions; and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from those policies and practices that the institution disclosed in the most recent disclosure it sent to consumers in accordance with section 503.¹² This amendment to the GLB Act became effective upon enactment of the FAST Act in December 2015.

⁹ 17 CFR 160.1 and 160.5. Part 160 does not apply to foreign (non-resident) FCMs, RFEDs, CTAs, CPOs, IBs, MSPs, and SDs that are not registered with the Commission. 17 CFR 160.1. Therefore, they are not “Covered Persons” as defined in this release.

¹⁰ Section 75001, Pub. L. 114-94, 129 Stat. 1312 (2015), available at http://transportation.house.gov/uploadedfiles/fastact_xml.pdf (last visited Nov. 30, 2018).

¹¹ *Id.*

¹² *See* 15 U.S.C. 6803(f).

II. Proposal

On December 10, 2018, the Commission published a Notice of Proposed Rulemaking (the “NPRM”)¹³ to amend § 160.5 of the Commission’s regulations (the “Proposal”) to implement the FAST Act amendments to the GLB Act with respect to Covered Persons.¹⁴ Specifically, the Commission proposed to modify § 160.5(a) to add a reference to an exception, contained in a new paragraph (d), to the requirement that a Covered Person annually provide a clear and conspicuous notice to customers that reflects the Covered Person’s privacy policies and practices (“annual privacy notice”) during the life of the customer relationship. The Commission proposed to describe that exception in Section 160.5(d)(1) by stating that a Covered Person is not required to deliver an annual privacy notice to customers pursuant to § 160.5(a) if it: (1) provides nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of §§ 160.13, 160.14, 160.15 and any other exceptions adopted by the Commission pursuant to section 504(b) of the GLB Act;¹⁵ and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the

¹³ 83 FR 63450 (Dec. 10, 2018).

¹⁴ In developing the Proposal, pursuant to Section 6804(a)(2) of the GLB Act, the Commission consulted and coordinated with the Bureau of Consumer Financial Protection (“CFPB”), the Securities and Exchange Commission, the Federal Trade Commission, and the National Association of Insurance Commissioners regarding consistency and comparability with the regulations prescribed by such agencies. *See* 15 U.S.C. 6804(a)(2). In addition, the Proposal was consistent with rules recently finalized by the CFPB (“CFPB Final Rule”). *See* Amendment to the Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Regulation P), 83 FR 40945 (Aug. 17, 2018).

¹⁵ Section 503(f)(1) of the GLB Act permits a financial institution to share nonpublic personal information in accordance with the provisions of sections 502(b)(2) or (e) of the GLB Act or regulations prescribed under section 504(b) of the GLB Act. *See* 15 U.S.C. 6802 and 6803. Sharing by a financial institution, as described in sections 502(b)(2) or (e), does not trigger the consumer’s statutory right to opt out of such sharing. These exceptions are incorporated into existing Commission regulations at 17 CFR 160.13 (Exception to opt out requirements for service providers and joint marketing), 160.14 (Exceptions to notice and opt out requirements for processing and servicing transactions), and 160.15 (Other exceptions to notice and opt out requirements). Section 504(b) of the GLB Act gives the Commission and other relevant agencies authority to include additional exceptions to certain regulations promulgated under Title V as are deemed consistent with Title V’s purposes. *See* 15 U.S.C. 6804(b).

policies and practices that were disclosed to the customer under § 160.6(a)(2) through (5) and § 160.6(a)(9)¹⁶ in the most recent privacy notice provided to such customer pursuant to part 160 of the Commission's regulations.

In addition, because, as discussed in the Proposal, the GLB Act is silent as to when a financial institution that has relied on and no longer meets the requirements of the exception must next provide an annual privacy notice, the Commission proposed a framework for these circumstances. Specifically, proposed § 160.5(d)(2) stated that a Covered Person who has been excepted from delivering an annual privacy notice pursuant to § 160.5(d)(1) and who changes its policies or practices in such a way that it no longer meets the requirements for that exception, would, if such a change required a revised privacy notice pursuant to § 160.8,¹⁷ be required to provide an annual privacy notice in accordance with the timing requirements in § 160.5(a), treating the revised privacy notice as an initial privacy notice. Further, if the change in policies or practices did not require a revised privacy notice pursuant to § 160.8 to be sent, a Covered Person who has been previously excepted from delivering an annual privacy notice would be required to provide an annual privacy notice to customers within 100 days of the change in their policies or practices.¹⁸

¹⁶ Paragraphs (1) through (9) of § 160.6(a) set forth the specific types of information that a Covered Person must include in its privacy notices. 17 CFR 160.6 (a)(1)-(9). As discussed in the Proposal, the information required by § 160.6(a)(2) through (5) and § 160.6(a)(9), which § 160.5(d)(1)(ii) references, specifically relate to the policies and practices connected to disclosing nonpublic personal information. As new GLB Act section 503(f)(2) states that a condition for the annual privacy notice exception is that a financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent notice sent to consumers, the Commission is framing the scope of the proposed exception to reference only the types of information listed in § 160.6(a)(2) through (5) and § 160.6(a)(9).

¹⁷ 17 CFR 160.8 (Revised privacy notices).

¹⁸ In developing this framework, the Commission looked to § 160.8 because that provision already addresses circumstances in which a Covered Person might change its privacy policies or practices in a way that affects the content of the notices. Specifically, § 160.8 requires that a Covered Person provide a

As discussed in the Proposal, the Commission proposed this 100-day period because the Commission believes the annual privacy notice should be delivered within a relatively short time so that customers are informed of the change in a timely manner. Further, the Commission stated its belief that 100 days would allow a Covered Person to meet the notice requirement without imposing additional costs on Covered Persons; particularly, a 100-day delivery period would accommodate the inclusion of the notice with their quarterly statements.¹⁹ In addition, this 100-day delivery period is required under the CFPB Final Rule, and the Commission stated that proposing the same delivery requirement as the CFPB furthers the Commission's goal of having its regulations be consistent with those of other regulators, where appropriate.

In order to ensure that the Proposal, if adopted, achieved its stated purpose, the Commission requested comments generally on all aspects of the Proposal and the NPRM,²⁰ as well as comments on certain specific matters discussed below. The comment period for the Proposal ended on February 8, 2019.

revised notice to consumers before implementing certain types of changes. In other cases, part 160 currently contemplates that a change in policy or practice that affects the content of the notices would simply be reflected on the next regular annual notice provided to customers pursuant to § 160.5. The Commission therefore proposed different timing requirements for resumption of delivery of annual notices, depending on whether the change at issue would trigger the requirement for a revised notice under § 160.8 prior to the change taking effect.

¹⁹ The Commission also noted in the Proposal that a delivery requirement resulting from a change in policies and practices described under proposed Commission regulation 160.5(d)(1)(ii) is effectively a one-time burden for a Covered Person absent additional changes to its policies and practices. Specifically, under the Proposal, after providing the one annual privacy notice, the Covered Person would once again meet both of the conditions for the exception—it would not be sharing other than as described under Commission regulation 160.5(d)(1)(i) and its policies and practices would not have changed since it provided the annual privacy notice. Because the Covered Person would once again meet the conditions for the exception, it would not be required to provide future annual privacy notices.

²⁰ Proposal, 83 FR at 63453.

III. Summary of Comments and Final Rule

The Commission received one relevant comment,²¹ which was supportive of the Proposal.

The Commission is adopting the final rule (“Final Rule”) as proposed. Accordingly, the Commission is adopting the amendments to Commission regulation 160.5 as shown in the rule text in this document and for the reasons discussed in the Proposal and reiterated above.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act²² (“RFA”) requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission requested comments with respect to the RFA and received no such comments.

As discussed in the Proposal, the Final Rule adds an exception to § 160.5’s requirement that Covered Persons deliver annual privacy notices, as discussed above. The Final Rule affects Covered Persons (i.e., certain FCMs, RFEDs, CTAs, CPOs, IBs, MSPs, and SDs). To the extent that the Final Rule will impact Covered Persons that may

²¹ The Commission also received one comment that was not relevant to the Proposal. These comments are available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2938>.

²² 5 U.S.C. 601 *et seq.*

be small entities for purposes of the RFA,²³ the Commission considered whether the Final Rule will have a significant economic impact on such Covered Persons.

As a Covered Person may continue to provide annual privacy notices and not avail itself of the exception to the annual privacy notice requirement in § 160.5, the Final Rule will not impose any new regulatory obligations on Covered Persons, including Covered Persons that may be small entities for purposes of the RFA. Rather, to the extent that a Covered person relies on the exception, it would simply avoid providing a privacy notice annually until such time as it is no longer eligible for the exception. The Final Rule's clarification that, once it is no longer eligible for the exception, the Covered Person needs to provide a privacy notice either in accordance with existing § 160.8 or within 100 days also does not result in any new burdens. Sections 160.5 and 160.8 are existing requirements to deliver annual privacy notices and revised privacy notices under certain circumstances. Further, the Commission endeavors to reduce any burdens for those Covered Persons utilizing the exception by allowing the 100-day period following loss of the exception to resume delivery of an annual privacy notice where a notice is not already required pursuant to § 160.8, as discussed above. The Commission does not, therefore, expect that any small entities that may be impacted by the rule to incur any additional costs as a result of the Final Rule.

²³ The Commission has previously determined that certain entities are not "small entities" for purposes of the RFA. *See, e.g.*, 47 FR 18618, 18619 (Apr. 30, 1982) (registered FCMs); 75 FR 55410, 55416 (Sept. 10, 2010) (RFEDs); 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs). However, the Commission has determined that CPOs exempt pursuant to 17 CFR 4.13(a) are small entities. *See* 46 FR 26004 (May 8, 1981); 47 FR at 18619. The definitions of IB and CTA are also broad enough to potentially encompass "small entities." *See* 48 FR 35248, 35276 (Aug. 3, 1983) (recognizing that the IB definition "undoubtedly encompasses many business enterprises of variable size"); 47 FR at 18620 (the category of CTAs is "too broad" for a general determination regarding their small entity status).

Therefore, the Commission believes that the Final Rule will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”)²⁴ imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (“OMB”) control number.

As discussed in the Proposal, the Commission believes that the Final Rule will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of OMB under the PRA. However, by providing the exception to the requirement to provide annual privacy notices to customers discussed above, the Final Rule modifies a collection of information for which the Commission has previously received a control number from OMB. The title for this collection of information is “Privacy of Consumer Financial Information, OMB control number 3038-0055”.²⁵ Collection 3038-0055 is currently in force with its control number having been provided by OMB. Accordingly, the Commission submitted to

²⁴ 44 U.S.C. 3501 *et seq.*

²⁵ See OMB Control No. 3038-0055,

<http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0055#> (last visited Nov. 30, 2018).

OMB revisions to OMB control number 3038-0055 to reflect the addition of this exception and the resulting reduction of burden. In particular, the Commission estimated that the availability of the exception in Commission regulation 160.5(d) will reduce the current number of annual privacy notices by approximately 30%. Accordingly, in accordance with its previous estimates, the Commission estimated that the Final Rule will reduce the total number of responses by 113,620 responses annually and reduce the time burden by approximately 1,136 hours annually. The Commission believes that the one-time cost of adopting the annual privacy notice exception for Covered Persons that adopt it is de minimis.

Information Collection Comments. In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed therein. The Commission did not receive any such comments.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following 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 considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

As discussed above, the Commission is implementing the FAST Act's amendments to the GLB Act by amending § 160.5 to incorporate an exception to a

Covered Person's obligation to provide an annual privacy notice under certain specified circumstances, consistent with section 503(f) of the GLB Act, and address when a Covered Person that has relied on and no longer meets the requirements of that exception must next provide an annual privacy notice.

Below, the Commission discusses the costs and benefits of the Final Rule.²⁶ The baseline against which the costs and benefits are considered is the current status quo for Covered Persons with respect to their obligation to provide annual privacy notices. The Commission recognizes that there are inherent costs and benefits to Covered Persons and their customers associated with providing an exception to the annual privacy notice requirement, which Congress took into account in amending the GLB Act under the FAST Act. The Commission further recognizes that there are costs and benefits due to discretionary actions taken by the Commission in implementing the exception. In formulating the Final Rule, the Commission was mindful of the policy goals that drove Congress to create this exception and endeavored not to impose unnecessary burdens on Covered Persons in determining when a Covered Person next needs to provide an annual privacy notice after loss of the exception.²⁷

²⁶ The Commission endeavors to assess the expected costs and benefits of the Final Rule in quantitative terms where possible. Where estimation or quantification is not feasible, the Commission provides its discussion in qualitative terms. Given a general lack of relevant data, the Commission's assessment is generally provided in qualitative terms.

²⁷ The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving United States firms taking place across international boundaries; with some commission registrants being organized outside of the United States; with some leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of this proposal on all activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on United States commerce under CEA section 2(i). In particular, the Commission notes that some Covered Persons are located outside of the United States.

The Commission anticipates that some Covered Persons may avail themselves of the exception in the Final Rule and not provide annual privacy notices. The Final Rule benefits these Covered Persons that are opting out of providing annual privacy notices by reducing their costs associated with sending such notices. Further, because no Covered Person is required to avail themselves of the exception in the Final Rule, as discussed above, the Commission believes that it is reasonable to conclude that only those Covered Persons that expect a net benefit from the Final Rule will stop providing annual privacy notices under the proposed exception.

The Commission recognizes that, as a result of the Final Rule, certain customers of Covered Persons may no longer receive privacy notices annually and therefore will not be made aware of the Covered Persons' policies and procedures as frequently. However, the scope of the exception is tailored such that customers of Covered Persons could only not receive an annual privacy notice to the extent that the Covered Person: (1) provides nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of §§ 160.13, 160.14, 160.15 and any other exceptions adopted by the Commission pursuant to section 504(b) of the GLB Act; and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 160.6(a)(2) through (5) and § 160.6(a)(9) in the most recent privacy notice provided to such customer pursuant to part 160 of the Commission's regulations. Thus, the Final Rule may reduce confusion among customers by providing them with disclosures when they would be most relevant, i.e., when disclosure policies change after the customer relationship begins and to the

extent an institution shares sensitive personal information with third parties for marketing purposes.

In determining when to require the resumption of annual privacy notices following the loss of the exception in the Final Rule, the Commission endeavored to make its requirements consistent with existing timing requirements for privacy notices under current regulations, as discussed above, and to provide clarity to Covered Persons.²⁸ Specifically, in requiring the resumption of annual privacy notices within 100 days of the loss of the exception where a revised privacy notice is not required under § 160.8, the Commission has tried not to impose unnecessary burdens on Covered Persons while taking into account the potential impact on a Covered Person's customers of not receiving such notices in a timely manner. The Commission considered different requirements for the resumption of annual privacy notices in these circumstances (e.g., requiring a notice before the change in the policy or practice causing the loss of the availability of the exception or immediately following such change, or within 60 or 90 days of such change). The Commission is providing the 100 day period because it believes the Final Rule to be consistent with the revisions of the GLB Act in the FAST Act and current regulations while allowing Covered Persons some flexibility in resuming annual privacy notices. This flexibility allows, for example, these notices to be included with quarterly statements to reduce any costs from resuming providing such notices. In providing timing requirements for the resumption of annual privacy notices where a revised notice is required under § 160.8, the Commission is clarifying the effect of such a

²⁸ In addition, as discussed above, the Commission notes that a Covered Person's obligation to resume providing annual privacy notices may be effectively a one-time burden absent additional changes to their policies and practices.

revised notice on the requirement that a Covered Person provide an annual privacy notice and on the eligibility for the exception to this requirement. Specifically, the Commission is clarifying that a Covered Person must provide the notice currently required by § 160.8 and treat such notice as an initial privacy notice.

Section 15(a) Considerations. In light of the foregoing, the CFTC has evaluated the costs and benefits of the Final Rule pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(1) Protection of Market Participants and the Public

The requirements of § 160.5 protect market participants by ensuring that customers of Covered Persons are informed about such Covered Persons' practices and policies with respect to nonpublic personal information and certain other information described in § 160.6. As discussed above, the Commission recognizes that, as a result of the Final Rule, some customers of Covered Persons may no longer receive privacy notices annually and therefore will not be made aware of the Covered Persons' policies and procedures as frequently. However, the scope of the exception is tailored such that customers of Covered Persons could only not receive an annual privacy notice to the extent that the Covered Person: (1) provides nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of §§ 160.13, 160.14, 160.15 and any other exceptions adopted by the Commission pursuant to section 504(b) of the GLB Act; and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 160.6(a)(2) through (5) and § 160.6(a)(9) in the most recent privacy notice provided to such customer pursuant to part 160 of the

Commission's regulations. Further, as discussed above, the Final Rule may reduce confusion among customers by providing them with disclosures when they would be most relevant. In addition, the Commission believes that the requirements for the resumption of annual privacy notices following the loss of the exception in the Final Rule will allow customers of Covered Persons to receive annual privacy notices in a timely manner while not causing Covered Persons to incur any additional costs.

(2) Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the Final Rule may improve competition by reducing costs for Covered Persons that meet the requirements of the exception in § 160.5(d) to not deliver an annual privacy notice and elect to not deliver such notices. Specifically, the Commission expects that the Final Rule will likely result in fewer substantially similar annual privacy notices being delivered, which will reduce costs associated with producing and delivering such privacy notices. Further, to the extent that a Covered Person is no longer able to take advantage of the exception to providing annual privacy notices and is required to resume providing them, the Commission believes that a Covered Person will not incur any additional costs in doing so, as the Covered Person would simply need to resume sending annual privacy notices as currently required.

(3) Price Discovery

The Commission has not identified an impact on price discovery as a result of the Final Rule.

(4) Sound Risk Management

The Commission has not identified an impact on sound risk management as a result of the Final Rule.

(5) Other Public Interest Considerations

The Commission has not identified an impact on other public interest considerations as a result of the Final Rule.

Comments on Cost-Benefit Considerations. The Commission invited public comment on its cost-benefit considerations in the Proposal, including the Section 15(a) factors described above. The Commission received no such comments.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.²⁹ The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested and did not receive any comments on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Final Rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requested and did not receive any comments on whether the Proposal was anticompetitive and, if it is, what the anticompetitive effects are.

²⁹ 7 U.S.C. 19(b).

Because the Commission has preliminarily determined that this Final Rule is not anticompetitive and has no anticompetitive effects and received no comments on its determination, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 160

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

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

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

1. The authority citation for part 160 continues to read as follows:

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

2. In § 160.5, revise the first sentence of paragraph (a)(1) and add paragraph (d) to read as follows:

§ 160.5 Annual privacy notice to customers required.

(a)(1) * * * Except as provided by paragraph (d) of this section, you must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the life of the customer relationship. * * *

* * * * *

(d) *Exception to annual privacy notice requirement.* (1) You are not required to deliver an annual privacy notice if you:

(i) Provide nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of §§ 160.13, 160.14, and 160.15 and any other exceptions adopted by the Commission pursuant to section 504(b) of the GLB Act; and

(ii) Have not changed your policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 160.6(a)(2) through (5) and § 160.6(a)(9) in the most recent privacy notice sent to the customer pursuant to this part.

(2) Delivery of annual privacy notice after you no longer meet requirements for exception. If you have been excepted from delivering an annual privacy notice pursuant to paragraph (d)(1) of this section and change your policies or practices in such a way that you no longer meet the requirements for that exception, you must comply with paragraph (d)(2)(i) or (ii) of this section, as applicable.

(i) Changes preceded by a revised privacy notice. If you no longer meet the requirements of paragraph (d)(1) of this section because you change your policies or practices in such a way that § 160.8 of this part requires you to provide a revised privacy notice, you must provide an annual privacy notice in accordance with the timing requirements in paragraph (a) of this section, treating the revised privacy notice as an initial privacy notice.

(ii) Changes not preceded by a revised privacy notice. If you no longer meet the requirements of paragraph (d)(1) of this section because you change your policies or practices in such a way that § 160.8 of this part does not require you to provide a revised privacy notice, you must provide an annual privacy notice within 100 days of the change

in your policies or practices that causes you to no longer meet the requirements of paragraph (d)(1) of this section.

Issued in Washington, DC, on April 19, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Appendix to Privacy of Consumer Financial Information – Amendment To Conform Regulations to the Fixing America’s Surface Transportation Act – Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.