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Part XLVII

Commodity Futures Trading Commission

Semiannual Regulatory Agenda

COMMODITY FUTURES TRADING COMMISSION (CFTC)

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules that the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

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SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

Semiannually, each agency shall publish in the **Federal Register** a regulatory flexibility agenda that shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1). 5 U.S.C. 602(a).

The Commission has prepared an agenda of significant rules that it presently expects may be considered during the course of the next year. These rules may have some impact on small entities.¹ In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: “Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda.”

The Commission’s fall 2004 regulatory flexibility agenda is set forth below.

Issued in Washington, DC, on September 30, 2004, by the Commission.

Jean A. Webb,
Secretary of the Commission.

Commodity Futures Trading Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3798	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons; Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices	3038-AB75
3799	Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act	3038-AC04
3800	Haircuts on Foreign Currency	3038-AC05
3801	Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions	3038-AC12
3802	Investment of Customer Funds and Record of Investments	3038-AC15
3803	Customer Permission for FCMs To Take the Opposite Side of an Order	3038-AC16
3804	Guidance on Clearing of Over-The-Counter Options on Exempt Commodities by a Designated Contract Market	3038-AC17

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3805	Collection of Claims Owed the United States Arising from Activities Under the Commission’s Jurisdiction	3038-AC03
3806	Execution of Off-Centralized Market Transactions: Regulation 1.38 and Guidance on Core Principle 9	3038-AC07
3807	Reporting Levels and Trades Involving the Exchange of Futures	3038-AC08
3808	Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market	3038-AC14

¹ The Commission published its definition of small entity to be used in connection with rulemaking proceedings on April 30, 1982 (47 FR 18618). Pursuant to that definition, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. (See 5 U.S.C. 602(a)(1)). Moreover, the Commission has previously certified, pursuant to section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic

impact on a substantial number of small entities. Accordingly, the listing of a rule in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda that includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing an early and

meaningful opportunity to participate in and comment on the formulation of new or revised regulations. In addition to publishing the regulatory flexibility agenda, the Commission also makes available to the public, on a monthly basis, a calendar and, on a weekly basis, posts an advisory on its website (<http://www.cftc.gov>) that lists rules that the Commission is considering or will consider in the near future.

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Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3809	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States	3038-AB45
3810	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers	3038-AB64
3811	Information Access and Price Transparency For Exempt Commercial Markets	3038-AC02
3812	Adjustment of Civil Monetary Penalties for Inflation	3038-AC13

Commodity Futures Trading Commission (CFTC)

Proposed Rule Stage

3798. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS; REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON-NARROW-BASED INDICES

Priority: Substantive, Nonsignificant
Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763
CFR Citation: Not Yet Determined
Legal Deadline: Other, Statutory, December 21, 2001, Within one year after the date of enactment of the Commodity Futures Modernization Act of 2000.

Abstract: The Commission and the Securities and Exchange Commission are required to jointly issue: (1) rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of security futures products traded on or subject to the rules of a foreign board of trade to United States persons, and (2) rules and regulations that set forth the requirements for foreign stock index contracts to qualify as non-narrow-based indices.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Related RIN: Related to 3038-AB78
RIN: 3038-AB75

3799. INTERAGENCY PROPOSAL TO CONSIDER ALTERNATIVE FORMS OF PRIVACY NOTICES UNDER THE GRAMM-LEACH-BLILEY ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 7b-2; 7 USC 12a(5); 15 USC 6801 et seq

CFR Citation: 17 CFR 160

Legal Deadline: None

Abstract: Subtitle A of the Gramm-Leach-Bliley Act (GLB Act), captioned Disclosure of Nonpublic Personal Information (15 U.S.C. 6801 et seq.), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties, and provide a consumer a reasonable opportunity to direct the institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The GLB Act agencies, including CFTC, have published

substantially identical regulations to implement GLB title V, known collectively as the "privacy rule." Many notices issued under the privacy rule were long and complex, and difficult to compare with each other. Consequently, GLB Act agencies are considering whether to amend the privacy rule to provide for simpler, more useful notices. The GLB Act agencies intend to issue an advance notice of proposed rulemaking to determine whether to propose changes to the privacy rule, and if so, will seek further public comment on specific programs. Six of the eight GLB Act agencies have entered into a memorandum of understanding through which they intend to contract with a consumer testing firm. CFTC is not a party to the MOU.

Timetable:

Action	Date	FR Cite
ANPRM	12/30/03	68 FR 75164
ANPRM Comment Period End	03/29/04	
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3038-AC04

3800. HAIRCUTS ON FOREIGN CURRENCY

Priority: Substantive, Nonsignificant.
Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 6f(b)

CFR Citation: 17 CFR 1.17

Legal Deadline: None

Abstract: The Commission is proposing to amend regulations that specify required capital charges, or exclusions from net capital, to be deducted by futures commission merchants (FCMs) and introducing brokers (IBs) when computing their adjusted net capital. For forward contracts that are not covered by an open futures contract or commodity option, and are in specified foreign currencies (British pounds, Canadian dollars, Japanese yen, Swiss francs, or the Euro), the proposed amendment would apply a capital charge of six percent of the market value of the FCM's or IB's uncovered forward contracts in these currencies. Uncovered forwards in any other non-U.S. currency would remain subject to the 20 percent capital charge currently set forth in the Commission's regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	
NPRM Comment Period End	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AC05

3801. • RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION, AND MEMBER RESPONSIBILITY ACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 4a; 7 USC 12a; 7 USC 21

CFR Citation: 17 CFR 171

Legal Deadline: None

Abstract: The Commodity Futures Trading Commission proposes to amend 17 CFR 171.1(b)(4) to add "Hearing Committee" to the list of committees covered by that section, and to add a new section 171.1(b)(5) to exclude from Commission review any appeal regarding a National Futures Association suspension of membership for failing to pay a settlement or arbitration award, in the absence of extraordinary circumstances.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 3038-AC12

3802. • INVESTMENT OF CUSTOMER FUNDS AND RECORD OF INVESTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6(c); 7 USC 6d

CFR Citation: 17 CFR 1.25; 17 CFR 1.27

Legal Deadline: None

Abstract: The Commission expects to propose amendments to Rule 1.25 to address: (1) the portfolio time-to-maturity requirement for portfolios consisting exclusively of U.S. Treasury securities; (2) standards for investing in instruments with embedded derivatives; (3) requirements for variable-coupon-rate securities; (4) concentration limits on reverse repurchase agreements; (5) transactions by futures commission merchants that are also registered as securities broker-dealers; (6) concentration limits on government sponsored entity securities; (7) rating standards and registration requirements for money market mutual funds; and (8) certain technical changes. The Commission also expects to propose a technical amendment to Rule 1.27 in connection with repurchase agreements and proposed transactions by futures commission merchants that are also broker-dealers.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	
NPRM Comment Period End	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AC15

3803. • CUSTOMER PERMISSION FOR FCMS TO TAKE THE OPPOSITE SIDE OF AN ORDER

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6b; 7 USC 12a

CFR Citation: 17 CFR 1.55

Legal Deadline: None

Abstract: The Commission is proposing to amend Rule 1.55 to expand the list of disclosures that futures commission merchants and introducing brokers may provide in a single document and that noninstitutional customers may acknowledge with a single signature to

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include the consent referenced in Rule 155.3(b)(2) concerning customer permission for futures commission merchants and introducing brokers to take the opposite side of an order. The Commission adopted such a rule amendment in November 2000, but withdrew it the following month upon passage of the Commodity Futures Modernization Act of 2000. Most of the rules adopted and withdrawn in 2000 were repropose and readopted in 2001, but this one was not.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	
NPRM Comment Period End	12/00/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Susan A. Elliott, Attorney Advisor, Division of Clearing and Intermediary Oversight,

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RIN: 3038-AC16**3804. • GUIDANCE ON CLEARING OF OVER-THE-COUNTER OPTIONS ON EXEMPT COMMODITIES BY A DESIGNATED CONTRACT MARKET****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 2(h)**CFR Citation:** None**Legal Deadline:** None

Abstract: The Office of General Counsel will be issuing interpretive guidance addressing the provision of centralized clearing services by a designated contract market for over-the-counter options on exempt commodities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: Undetermined**Government Levels Affected:** Undetermined

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RIN: 3038-AC17

Commodity Futures Trading Commission (CFTC)

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3805. COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.**Legal Authority:** 31 USC 3720D; 31 CFR 285.11**CFR Citation:** 17 CFR 143**Legal Deadline:** None

Abstract: Pursuant to the Debt Collection Improvement Act (DCIA) of 1996, the Department of the Treasury has promulgated regulations authorizing and governing the administrative garnishment of wages of persons, not employed by the Federal Government, who owe claims to the United States. Under DCIA and Treasury regulations, Federal agencies can promulgate rules allowing for the garnishment of such claims arising from actions within their jurisdiction. As a general matter, the individual agencies' rules must adopt, or otherwise conform to, the Treasury rules. To expedite the collection of claims arising from activity within its

jurisdiction, the Commission is amending its part 143 rules, governing debt collections, to provide for administrative wage garnishment.

Timetable:

Action	Date	FR Cite
NPRM	12/15/03	68 FR 69634
NPRM Comment Period End	01/14/04	
Final Action	11/00/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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RIN: 3038-AC03**3806. EXECUTION OF OFF-CENTRALIZED MARKET TRANSACTIONS: REGULATION 1.38 AND GUIDANCE ON CORE PRINCIPLE 9****Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763**CFR Citation:** 17 CFR 1; 17 CFR 38**Legal Deadline:** None

Abstract: Since the Commission originally promulgated Regulation 1.38, the Commodity Futures Modernization Act of 2000 (CFMA) was signed into law. CFMA, among other things, specifically expanded the allowable transactions that could be executed off the centralized market. The Commission is considering whether to propose amendments to its rules concerning trading off the centralized market, including the addition of guidance on contract market block trading rules, in light of further administrative experience with, and consideration of, the implications of CFMA.

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Timetable:

Action	Date	FR Cite
NPRM	07/01/04	69 FR 39880
NPRM Comment Period End	08/30/04	
Final Action	01/00/05	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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RIN: 3038-AC07**3807. REPORTING LEVELS AND TRADES INVOLVING THE EXCHANGE OF FUTURES****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763**CFR Citation:** 17 CFR 15 to 21**Legal Deadline:** None

Abstract: The Commission is proposing rules that raise reporting levels, address the manner in which certain transactions are reported to the

Commission, and amend current data transmission practices.

Timetable:

Action	Date	FR Cite
NPRM	05/12/04	69 FR 26333
NPRM Comment Period End	06/11/04	
Final Action	11/00/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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RIN: 3038-AC08**3808. • APPLICATION PROCEDURES FOR REGISTRATION AS A DERIVATIVES TRANSACTION EXECUTION FACILITY OR DESIGNATION AS A CONTRACT MARKET****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763**CFR Citation:** 17 CFR 37; 17 CFR 38**Legal Deadline:** None

Abstract: The Commission is proposing to change to 90 days from, respectively, 60 days and 30 days, the time within which an applicant may be deemed to be designated as a contract market or registered as a derivatives transaction execution facility. Applicants who wish fast track review will be required to request such review. Review under fast track procedures may be terminated if it appears that the application is materially incomplete or that it raises novel or complex issues that require additional time for review.

Timetable:

Action	Date	FR Cite
NPRM	09/01/04	69 FR 53367
NPRM Comment Period End	10/01/04	
Final Action	01/00/05	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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RIN: 3038-AC14

Commodity Futures Trading Commission (CFTC)

Completed Actions

3809. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES**Priority:** Substantive, Nonsignificant**CFR Citation:** 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10**Completed:**

Reason	Date	FR Cite
Second NPRM	04/06/04	69 FR 17998
Second NPRM Comment Period End	06/07/04	
Final Action	08/12/04	69 FR 49800
Final Action Effective	09/13/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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RIN: 3038-AB45**3810. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS****Priority:** Substantive, Nonsignificant**CFR Citation:** 17 CFR 1.17**Completed:**

Reason	Date	FR Cite
Final Action	08/12/04	69 FR 49784
Final Action Effective	09/30/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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RIN: 3038-AB64

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3811. INFORMATION ACCESS AND PRICE TRANSPARENCY FOR EXEMPT COMMERCIAL MARKETS**Priority:** Substantive, Nonsignificant**CFR Citation:** 17 CFR 36.3**Completed:**

Reason	Date	FR Cite
Final Action	07/20/04	69 FR 43285
Final Action Effective	09/20/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Donald H. Heitman

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RIN: 3038-AC02**3812. • ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 9; 7 USC 13a; 7 USC 13a-1; 28 USC 2461 note**CFR Citation:** 17 CFR 143.8**Legal Deadline:** None

Abstract: The Commission is amending Rule 143.8, which governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties assessable for violations of the Commodity Exchange Act and Commission rules and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

Timetable:

Action	Date	FR Cite
Final Action	08/31/04	69 FR 52993
Final Action Effective	10/23/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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RIN: 3038-AC13

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