



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

RIN 3038-AE04

Delegation of Authority to Disclose Confidential Information to a Contract Market,
Registered Futures Association or Self-Regulatory Organization

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations to add to its delegation of authority to staff respecting the disclosure of information to self-regulatory organizations newly established in the Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and not previously enumerated in the relevant regulations.

DATES: This rulemaking is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

Section 8a(6) of the Commodity Exchange Act (“CEA”), 7 U.S.C. 12a(6), authorizes the Commission to communicate to the proper committee of any registered

entity the “full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of [the CEA].” The term “registered entity” has been defined to include boards of trade designated as contract markets, derivatives clearing organizations, swap execution facilities, swap data repositories, and certain electronic facilities on which a contract determined by the Commission to be a significant price discovery contract is executed or traded.¹

The definition of “registered entity” in the CEA was amended by the Dodd-Frank Act, which was enacted on July 21, 2010.² Two new categories of registered entity were established: Swap execution facilities (“SEFs”) and swap data repositories (“SDRs”), which have self-regulatory roles in the swaps markets established in the CEA and its implementing regulations. Additionally, the core principles for derivatives clearing organizations (“DCOs”) were revised to expand the scope of a DCO’s self-regulatory responsibilities, in particular with respect to risk management. Commission regulations implementing the core principles require, for example, monitoring by the DCO of the large trader reports of its members,³ which may necessitate the sharing of information by the Commission to a DCO on a periodic basis.

In order to mitigate market disruptions, ensure the best interests of market participants, and to effectuate any purpose of the CEA as amended, the Commission is

¹ 7 U.S.C. 1a(40).

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

³ See 17 CFR 39.13(h)(2).

revising regulation 140.72 to permit the provision of critical information to all of these registered entities. Presently, the delegation of authority in regulation 140.72 provides certain employees of the Commission with the authority to disclose confidential information only to any contract market, registered futures association, or certain self-regulatory organizations.⁴ With this revision of regulation 140.72, the present delegation of authority will be expanded to include all registered entities as defined in the CEA and as permitted by section 8a(6) of the CEA.

II. RELATED MATTERS

A. Administrative Procedure Act

The revisions to the Commission's regulations in this rulemaking do not establish any new substantive or legislative rules, but rather relate solely to rules of agency organization, practice, or procedure. Therefore, this rulemaking is excepted from the public notice and comment provisions of the Administrative Procedure Act.⁵ Additionally, as the revisions to the Commission's regulations in this rulemaking will not cause any party to undertake efforts to comply with the regulations as revised, the Commission has determined to make this rulemaking effective upon publication in the Federal Register.⁶

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Commission to consider whether the regulations it adopts will have a significant economic impact on a substantial number of small entities.⁷ The Commission is obligated to conduct a regulatory flexibility analysis

⁴ 17 CFR 140.72.

⁵ 5 U.S.C. 553(b).

⁶ See 5 U.S.C. 553(d).

⁷ See 5 U.S.C. 601 et seq.

for any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act.⁸ This rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act. Accordingly, the Commission is not obligated to conduct a regulatory flexibility analysis for this rulemaking.

C. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a respondent is not required to respond to, a collection of information contained in a rulemaking unless the information collection displays a currently valid control number issued by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act.⁹ This rulemaking contains no collection of information that obligates the Commission to obtain a control number from OMB.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 140 – ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 is revised to read as follows:

Authority: 7 U.S.C. 2(a)(12) and 12(b).

§ 140.72 [Amended]

⁸ 5 U.S.C. 601(2).

⁹ See 44 U.S.C. 3501 et seq.

2. Amend § 140.72 in the section heading and paragraphs (a), (b), (d), and (f) by removing the words “contract market” wherever they appear and adding in their place the words “registered entity”.

Issued in Washington, DC, on April 5, 2013, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

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