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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 146

RIN 3038-AF22

Privacy Act Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) proposes to update its regulations regarding exemptions for certain systems of records from one or more provisions of the Privacy Act of 1974 (Privacy Act). The Commission proposes to revise these regulations to specifically identify the systems of records currently included in the regulation that the Commission is exempting, additional systems of records that the Commission intends to exempt, and the sections of the Privacy Act from which the Commission is exempting each system of records, and the reasons therefor, in order to better conform to the requirements of the Privacy Act and the guidance contained in Office of Management and Budget (OMB) Circular A-108, *Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act* (OMB A-108). The Commission also proposes to reorganize the regulations for ease of reference.

DATES: Please submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified as pertaining to “Privacy Act Regulations” by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in the Commission’s regulations at 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of a submission from 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 notice will be retained in the comment file and will be considered as required under the Administrative Procedure Act (APA), and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Kellie Cosgrove Riley, Chief Privacy Officer, privacy@cftc.gov, 202-418-5610, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. *The Privacy Act*

The Privacy Act of 1974¹ establishes a code of fair information practice principles that govern Federal agencies' collection, maintenance, use, and dissemination of an individual's personal information. The Privacy Act applies to information that is maintained in a "system of records," defined as a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.²

In addition to establishing a code of fair information practice principles, the Privacy Act restricts disclosure of records containing personal information that an agency maintains.³ The Privacy Act also grants individuals an increased right of access to

¹ 5 U.S.C. 552a.

² 5 U.S.C. 552a(a)(5).

³ 5 U.S.C. 552a(b).

records maintained about themselves as well as the right to request amendment of those records upon a showing that they are not accurate, relevant, timely, or complete.⁴

B. Privacy Act Exemptions

The Privacy Act permits agencies, where certain requirements are met and subject to limitations set forth in the Privacy Act, to specifically exempt systems of records from certain provisions of the Privacy Act, mainly pertaining to the Privacy Act's provisions permitting individuals to access and request amendment of their records.⁵ In order to claim an exemption, however, the agency must engage in a rulemaking process pursuant to the APA⁶ and make clear to the public why particular exemptions are being invoked.⁷

Part 146 of the Commission's regulations,⁸ entitled "Records Maintained on Individuals," contains the rules of the Commission implementing the Privacy Act. Commission regulations §§ 146.12 and 146.13 (together, Privacy Act regulations) currently assert exemptions for certain of the Commission's systems of records that contain records related to the Commission's investigatory mission and personnel security obligations. After reviewing those regulations, the Commission has preliminarily determined that the current Privacy Act regulations do not include all of the systems of records for which the Commission would, in fact, assert exemptions, and those systems of records that are currently referenced are not clearly identified with each system of records' number and accurate title. The Commission has also preliminarily determined to

⁴ 5 U.S.C. 552a(d).

⁵ 5 U.S.C. 552a(j) and (k).

⁶ 5 U.S.C. 553.

⁷ 5 U.S.C. 552a(j) and (k).

⁸ 17 CFR 146.

add more specificity regarding the rationale for exempting each of the systems of records in order to better demonstrate the Commission's compliance with subsections (j) and (k) of the Privacy Act⁹ and the corresponding guidance in OMB Circular A-108.¹⁰ OMB A-108, issued in 2016, provides that, at minimum, an agency's Privacy Act exemption regulations shall include the specific name of any systems of records that will be exempt pursuant to the regulations, the specific provisions of the Privacy Act from which the systems of records will be exempt and the reasons therefor, and an explanation of why the exemption is necessary and appropriate.¹¹ Accordingly, the Commission proposes to replace current § 146.12 of the Commission's regulations with a more detailed provision that would more specifically identify all of the systems of records it proposes to exempt, the specific provisions of the Privacy Act from which each system of records is being exempted, and the reasons why the Commission is adopting those exemptions. Moreover, the Commission has preliminarily concluded that a separate Privacy Act regulation § 146.13 for exemptions taken for an Office of the Inspector General (OIG) system of records is not required by the Privacy Act or OMB guidance. Accordingly, the Commission proposes to remove current Commission regulation § 146.13 and add the OIG exemptions to proposed Commission regulation § 146.12, with revisions to the content as explained below.

C. Specific Exempted Systems of Records

1. CFTC-1 Enforcement Matter Register and Matter Indices (CFTC-1)

⁹ 5 U.S.C. 552a(j) and (k).

¹⁰ OMB A-108, available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A108/omb_circular_a-108.pdf, at page 25.

¹¹ OMB A-108 at page 25.

CFTC-1 contains an index and registry of enforcement investigations. This system of records is not currently identified in Commission regulation § 146.12 as a system of records that the Commission has exempted. The Commission is proposing to exempt this system of records because the records are compiled for law enforcement purposes and must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is proposing to exempt this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is proposing to exempt CFTC-1, pursuant to subsection (k)(2) of the Privacy Act¹² and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

Request for Comment

The Commission requests comment on the justification for and scope of the proposed CFTC-1 exemptions.

2. CFTC-10 Investigatory Records (CFTC-10)

¹² 5 U.S.C. 552a(k)(2).

CFTC-10 contains records compiled for law enforcement purposes, including records developed during an investigation of violations or potential violations of the Commodity Exchange Act.¹³ This system of records is included in the current Commission regulation § 146.12 but is identified as “Exempted Investigatory Records” and the exemptions identified in the current regulation lack the specificity that the Commission is proposing to include in new regulation § 146.12. The Commission is proposing to identify this system of records by its proper title and number and set forth the specific reasons for which it is being exempted from particular provisions of the Privacy Act. To that end, the Commission is proposing to explain in revised Commission regulation § 146.12 that this system of records is being exempted because the records must be protected from disclosure in order to maintain the integrity of the investigative process and not provide an individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is proposing to exempt this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is proposing to exempt CFTC-10, pursuant to subsection (k)(2) of the Privacy Act¹⁴ and subject to the requirements and limitations set forth therein, from the following

¹³ 7 U.S.C. 1 *et seq.*

¹⁴ 5 U.S.C. 552a(k)(2).

provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

Request for Comment

The Commission requests comment on the justification for and scope of the CFTC-10 exemptions.

3. CFTC-12 National Futures Association (NFA) Applications Suite System (CFTC-12)

CFTC-12 contains records held by NFA on behalf of the Commission by delegated authority to support the Commission's registration and other regulatory authority. These records include records pertaining to the fitness of individuals to be registered with the Commission and engage in business activities that are subject to the Commission's jurisdiction and records pertaining to disciplinary or other adverse action investigated or taken with respect to individual registrants. This system of records is not currently identified in Commission regulation § 146.12 as a system of records that the Commission has exempted. The Commission is proposing to exempt this system of records because to the extent the records pertaining to individuals that NFA holds on behalf of the Commission are investigatory records compiled for law enforcement purposes, they must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is proposing to exempt this system of records in order to keep confidential the identity of sources who provided information to NFA acting on behalf of the Commission during the course of the

investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is proposing to exempt CFTC-12, pursuant to subsection (k)(2) of the Privacy Act¹⁵ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

Request for Comment

The Commission requests comment on the justification for and scope of the CFTC-12 exemptions.

4. CFTC-31 Closed Commission Meetings (CFTC-31)

CFTC-31 contains records about individuals who are the subject of discussion at closed Commission meetings, including those who are the subject of investigations or who are being considered for employment. This system of records is included in the current Commission regulation § 146.12 but identified as “Exempted Closed Commission Meetings” and the exemptions identified in the current regulation lack the specificity that the Commission is proposing to include in new regulation § 146.12. The Commission is proposing to identify this system of records by its proper title and number and to set forth the specific reasons for which it is being exempted from particular provisions of the Privacy Act. To that end, to the extent the records in this system of records pertain to law enforcement investigations, the Commission is proposing to exempt this system of records because the records must be protected from disclosure in order to maintain the

¹⁵ 5 U.S.C. 552a(k)(2).

integrity of the investigative process and not to provide to any individual an opportunity to compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is proposing to exempt this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Finally, to the extent records in this system of records are compiled solely for the purpose of determining the suitability, eligibility, or qualifications of an individual who is being considered for employment with the Commission, the Commission is proposing to exempt this system of records where the disclosure of records would reveal the identity of somebody who provided information in the context of the Commission's determination and who had expressly requested that their identity remain confidential. The Commission has preliminarily determined that such an exemption is necessary in order to obtain information relevant to its eligibility determinations. Accordingly, the Commission is proposing to exempt CFTC-31, pursuant to subsections (k)(2) and (k)(5) of the Privacy Act¹⁶ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

Request for Comment

¹⁶ 5 U.S.C. 552a(k)(2) and (k)(5), respectively.

The Commission requests comment on the justification for and scope of the CFTC-31 exemptions.

5. CFTC-32 Office of the Inspector General Investigative Files (CFTC-32)

CFTC-32 contains records relevant to criminal and civil investigations conducted by the Office of the Inspector General (OIG). This system of records is included in the current Commission regulation § 146.13 with exemptions promulgated pursuant to subsections (j)(2) and (k)(2) of the Privacy Act, the former for records related to the OIG's criminal law enforcement activities and the latter for investigatory records compiled for law enforcement purposes not within the scope of subsection (j)(2). The Commission has preliminarily concluded that a separate Privacy Act regulation § 146.13 for exemptions taken for this OIG system of records is not required by the Privacy Act or OMB guidance. Accordingly, the Commission, after consultation with the OIG, proposes to remove current Commission regulation § 146.13 and incorporate the exemptions for CFTC-32 into proposed Commission regulation § 146.12. Moreover, the Commission is proposing to set forth the specific reasons for which this system of records is being exempted from particular provisions of the Privacy Act. To that end, the Commission is proposing to explain in revised Commission regulation § 146.12 that this system of records is being exempted because the records must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual an opportunity to access records and compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is proposing to exempt this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of

the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities, federal employee and contractor witnesses may risk retaliation in the federal workplace, and any witness may risk witness interference tactics including threats, harassment, and physical and emotional harm. Specifically, the Commission is proposing to exempt this system of records, pursuant to subsection (j)(2) of the Privacy Act¹⁷ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G)-(I), (5), and (8); (f); and (g). In addition, the Commission is proposing to exempt this system of records, pursuant to subsection (k)(2) of the Privacy Act¹⁸ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

Request for Comment

The Commission requests comment on the justification for and scope of the CFTC-32 exemptions. The Commission also requests comment on whether the CFTC-32 exemptions should be included in proposed Commission regulation § 146.12 or remain in separate Commission regulation § 146.13.

6. CFTC-44 Personnel Clearance System (CFTC-44)

¹⁷ 5 U.S.C. 552a(j)(2).

¹⁸ 5 U.S.C. 552a(k)(2).

CFTC-44 contains records related to the background investigations and security clearances of individuals who have been or are being considered for access to Commission facilities, information technology systems, and classified or confidential information. These records may include statements from individuals who have provided information in the course of a background investigation and have requested that their identity remain confidential, and records that constitute investigatory materials compiled for law enforcement purposes. This system of records is identified in current regulation § 146.12 by its predecessor name, “Exempted Employee Background Investigation Material,” and the current regulation exempts the system of records only pursuant to subsection (k)(5) of the Privacy Act. The Commission is proposing to identify this system of records by its proper title and number and to set forth the specific reasons for which it is being exempted from particular provisions of the Privacy Act pursuant to both subsection (k)(2) and (k)(5) of the Privacy Act.¹⁹ To that end, to the extent records in this system of records are compiled solely for the purpose of determining an individual’s suitability, eligibility, or qualifications for employment with the Commission, the Commission is proposing to explain in the revised Commission regulation § 146.12 that this system of records is exempt where the disclosure of records would reveal the identity of somebody who provided information in the context of the Commission’s determination and who had expressly requested that their identity remain confidential in order to maintain the promised confidentiality and enable the Commission to obtain information relevant to its eligibility determinations. In addition, to the extent records in this system of records pertain to law enforcement investigations, the Commission is

¹⁹ 5 U.S.C. 552a(k)(2) and (k)(5).

proposing to exempt this system of records because the records must be protected from disclosure in order to maintain the integrity of the investigative process and not provide to any individual the opportunity to compromise that process, such as through the destruction of evidence, interference with witnesses, or otherwise. The Commission is also proposing to exempt this system of records in order to keep confidential the identity of sources who provided information to the Commission during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs for its law enforcement activities. Specifically, the Commission is proposing to exempt this system of records, pursuant to subsections (k)(2) and (k)(5) of the Privacy Act²⁰ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

Request for Comment

The Commission requests comment on the justification for and scope of the CFTC-44 exemptions.

7. CFTC-49 Whistleblower Records (CFTC-49)

CFTC-49 contains records related to whistleblower tips, complaints and referrals, records related to investigations and inquiries into whistleblower complaints, and records related to the whistleblower award claim and determination process. This system of records is not currently identified in Commission regulation § 146.12 as a system of

²⁰ 5 U.S.C. 552a(k)(2) and (k)(5).

records that the Commission has exempted. The Commission is proposing to exempt this system of records because the records are compiled for law enforcement purposes and must be protected from disclosure in order to maintain the integrity of the whistleblower process and not provide to any individual an opportunity to access records and compromise an investigation, such as through the destruction of evidence, interference with witnesses, or otherwise. In addition, the Commission is proposing to exempt this system of records in order to keep confidential the identity of sources who provided information during the course of the investigation under an express promise that their identities would remain confidential. If an individual can access the identities of confidential sources, those sources may be unwilling to provide information that the Commission needs to investigate whistleblower tips, complaints, and referrals. Specifically, the Commission proposes to exempt this system of records, pursuant to subsection (k)(2) of the Privacy Act²¹ and subject to the requirements and limitations set forth therein, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

Request for Comment

The Commission requests comment on the justification for and scope of the CFTC-49 exemptions.

II. Related Matters

A. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial

²¹ 5 U.S.C. 552a(k)(2).

number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities.²²

The proposed regulations, issued under the Privacy Act, exempt certain systems of records maintained by the Commission from certain provisions of the Privacy Act, primarily those provisions related to an individual's right to access and seek amendment of those records. Individuals are defined in the Privacy Act as United States citizens or aliens lawfully admitted to the United States for permanent residence.²³ Small entities, as defined in the RFA, are not individuals under the Privacy Act and are not provided rights thereunder; therefore, small entities are outside the scope of the proposed regulations. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information.²⁴ The Commission may not conduct or sponsor, and a respondent is not required to respond to, a request for collection of information unless the information collection request displays a currently valid control number issued by OMB. This proposed rule does not contain a "collection of information," as defined in the PRA. Accordingly, the requirements imposed by the PRA are not applicable to this proposed rule.

²² 5 U.S.C. 601 *et seq.*

²³ 5 U.S.C. 552a(a)(2).

²⁴ 5 U.S.C. 3501 *et seq.*

C. Cost-Benefit Considerations

Section 15(a) of the Commodity Exchange Act (CEA) provides that, before promulgating a regulation under the CEA or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission.²⁵ 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 the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.²⁶ The proposed rules are being promulgated under the Privacy Act and pertain to the rights of individuals with respect to records the Commission maintains about them. The proposed rules are not being promulgated under the CEA. Therefore, the Commission preliminarily finds that the considerations enumerated in section 15(a)(2) of the CEA are not applicable here.

Request for Comment

The Commission requests comment on whether its preliminary finding is correct.

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

²⁵ 7 U.S.C. 19(a).

²⁶ 7 U.S.C. 19(a)(2).

or registered futures association established pursuant to section 17 of the CEA.²⁷ The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission has considered the proposed rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects.

Because the Commission has preliminarily determined that the proposed rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act.

Request for Comment

The Commission requests comment on whether the proposed rule is anticompetitive and, if it is, what the anticompetitive effects are and whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed rule. The Commission also requests comment on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws.

List of Subjects in 17 CFR Part 146

Privacy.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 146 as follows:

²⁷ 7 U.S.C. 19(b).

PART 146 – RECORDS MAINTAINED ON INDIVIDUALS

1. The authority citation for part 146 continues to read as follows:

Authority: 88 Stat. 1896 (5 U.S.C. 552a), as amended; 88 Stat. 1389 (7 U.S.C. 4a(j)).

2. Revise § 146.12 to read as follows:

§ 146.12 Exemptions.

The Commission is exempting from certain provisions of the Privacy Act the systems of records set forth in this section. In addition, when these systems of records and any other of the Commission's systems of records maintain a record received from another system of records that is exempted from one or more provisions of the Privacy Act, the Commission will claim the same exemptions for that record that are claimed for the system of records from which it originated.

(a) *CFTC-1 Enforcement Matter Register and Matter Indices.* The system of records identified as CFTC-1 Enforcement Matter Register and Matter Indices contains an index and registry of enforcement investigations. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f), and from the following corresponding sections of this part: 146.3; 146.5; 146.6(d); 146.11(a)(7), (8), and (9); and 146.7(a). Exemptions from these particular subsections of the Privacy Act and sections of this part promulgated thereunder are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the

existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From subsection (d)(1), (2), (3), and (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all

information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From subsection (e)(4)(G), (H), and (I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act.

(b) *CFTC-10 Investigatory Records*. The system of records identified as CFTC-10 Investigatory Records contains records compiled for law enforcement purposes, including records developed during an investigation of violations or potential violations of the Commodity Exchange Act. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f), and from the following corresponding sections of this part: 146.3; 146.5; 146.6(d); 146.11(a)(7), (8), and (9); and 146.7(a). Exemptions from these particular subsections of the Privacy Act and sections of this part promulgated thereunder are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From subsection (d)(1), (2), (3), and (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From subsection (e)(4)(G), (H), and (I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is

exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act.

(c) *CFTC-12 National Futures Association (NFA) Applications Suite System*. The system of records identified as CFTC-12 National Futures Association (NFA) Applications Suite System contains records held by NFA on behalf of the Commission, by delegated authority to support the Commission's registration and other regulatory authority. These records include records pertaining to the fitness of individuals to be registered with the Commission and engage in business activities that are subject to the Commission's jurisdiction and records pertaining to disciplinary or other adverse action investigated or taken with respect to individual registrants. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f), and from the following corresponding sections of this part: 146.3; 146.5; 146.6(d); 146.11(a)(7), (8), and (9); and 146.7(a). Exemptions from these particular subsections of the Privacy Act are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures), because release of accountings of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From subsection (d)(1), (2), (3), and (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From subsection (e)(4)(G), (H), and(I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is

exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act.

(d) *CFTC-31 Closed Commission Meetings*. The system of records identified as CFTC-31 Closed Commission Meetings contains records about individuals who are the subject of discussion at closed Commission meetings, including those who are the subject of investigations or who are being considered for employment. These records may include statements from individuals who have provided information in the course of an applicant's or employee's background investigation or other Commission investigation and who have requested that their identities remain confidential. Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f), and from the following corresponding sections of this part: 146.3; 146.5; 146.6(d); 146.11(a)(7), (8), and (9); and § 146.7(a). Exemptions from these particular subsections of the Privacy Act are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From subsection (d)(1), (2), (3), and (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the

existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(4) From subsection (e)(4)(G), (H), and (I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act.

(e) *CFTC-32, Office of the Inspector General Investigative Files*. The system of records identified as CFTC-32 Office of the Inspector General Investigative Files contains records relevant to criminal and civil investigations conducted by the Office of the Inspector General, including records about individuals being investigated for fraudulent and abusive activities. Pursuant to 5 U.S.C. 552a(j)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G)-(I), (5), and (8); (f); and (g), and from the following corresponding sections of this part: 146.3; 146.4; 146.5; 146.6(b), (d), and (e); 146.7(a), (c), and (d); 146.8; 146.9; 146.10; and 146.11(a)(7), (8), and (9). In addition, pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f), and from the following corresponding sections of this part: 146.3; 146.5; 146.6(d); 146.11(a)(7), (8), and (9); and 146.7(a). Exemptions from these particular subsections of the Privacy Act are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From subsection (c)(4) (Notice of Correction), because this system is exempt from the access and amendment provisions of subsection (d), as noted in paragraph (e)(3) of this section.

(3) From subsection (d)(1), (2), (3), and (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsection (e)(1) (Relevancy and Necessity of Information) and (5) (Accuracy, Timeliness, Relevance, and Completeness), because in the course of investigations into potential violations of law, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective law enforcement requires the retention of all information that may aid in establishing patterns of unlawful activity and providing investigative leads.

(5) From subsection (e)(2) (Collect from Individual), because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement, in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) (Privacy Act Statement), because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process and hamper the investigation.

(7) From subsection (e)(4)(G), (H), and (I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act.

(8) From subsection (e)(8) (Serve Notice), because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, present a serious impediment to law enforcement by interfering with the ability to issue subpoenas or otherwise gather information, and reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) (Civil Remedies), because this system of records is exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act for the reasons noted in paragraph (e)(3) of this section; therefore, the Commission is not subject to civil action for failure to adhere to those requirements.

(f) *CFTC-44 Personnel Clearance System*. The system of records identified as CFTC-44 Personnel Clearance System contains records related to the background investigations and security clearances of individuals who have been or are being considered for access to Commission facilities, information technology systems, and classified or confidential information. These records may include statements from individuals who have provided information in the course of a background investigation and have requested that their identity remain confidential. Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f), and from the following corresponding sections of this part: 146.3; 146.5; 146.6(d); 146.11(a)(7), (8), and (9); and 146.7(a). Exemptions from these particular subsections of the Privacy Act are justified for the following reasons:

(1) From subsections (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the extent of that investigation and reveal investigative interests of the Commission and the recipient entity that were previously unknown to the individual. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to adequately assess an individual when making a decision about the individual's access to Commission facilities, information technology systems, and classified and confidential information.

(2) From subsection (d)(1), (2), (3), and (4) (Access and Amendment), because the records contained in this system may be related to ongoing investigations, and

individual access to these records could alert the subject of an investigation to the extent of that investigation and reveal investigative interests of the Commission and others that were previously unknown to the individual. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony, and engage in other activities that could compromise the investigation. In addition, providing an individual with access to these records may reveal the identity of a source who furnished information under an express promise that their identity would remain confidential. Amendment of the records in this system of records would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because in the course of conducting and adjudicating background investigations, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective investigations require the retention of all information that may aid in the investigation and provide investigative leads.

(4) From subsection (e)(4)(G), (H), and (I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act.

(g) *CFTC-49 Whistleblower Records*. The system of records identified as CFTC-49 Whistleblower Records contains records related to whistleblower tips, complaints and referrals, records related to investigations and inquiries into whistleblower complaints, and records related to the whistleblower award claim and determination process. Pursuant to 5 U.S.C. 552a(k)(2) and subject to the requirements and limitations set forth therein, the Commission is exempting this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f), and from the following corresponding sections of this part: 146.3; 146.5; 146.6(d); 146.11(a)(7), (8), and (9); and 146.7(a). Exemptions from these particular subsections of the Privacy Act are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures), because release of the accounting of certain disclosures could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and the recipient entity. Release of such information to the subject of an investigation could reasonably be anticipated to impede and interfere with the Commission's efforts to identify and investigate unlawful activities.

(2) From subsection (d)(1), (2), (3), and (4) (Access and Amendment), because individual access to these records could alert the subject of an investigation to the existence and extent of that investigation and reveal the investigative interests of the Commission and others. Providing a subject with access to these records could impair the effectiveness of the Commission's investigations and could significantly impede the investigation by providing the opportunity for the subject to destroy documentary evidence, improperly influence witnesses and confidential sources, fabricate testimony,

and engage in other activities that could compromise the investigation. Allowing the subject of the investigation to amend records in this system of records could likewise interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because in the course of investigations, the significance of certain information may not be clear or the information may not be strictly relevant or necessary to a specific investigation; but, effective investigations require the retention of all information that may aid in the investigation or aid in establishing patterns of activity and provide investigative leads.

(4) From subsection (e)(4)(G), (H), and(I) (Agency Requirements) and (f) (Agency Rules), because the Commission is not required to establish requirements, rules, or procedures related to access and amendment of records in a system of records that is exempt from the individual access and amendment provisions in subsection (d) of the Privacy Act.

§ 146.13 [Removed]

3. Remove § 146.13.

Issued in Washington, DC, on January 24, 2024, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Privacy Act Regulations – Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

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