



COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 10 and 11

RIN 3038-AF44

Amendments to CFTC Rules of Practice and Rules Relating to Investigations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is amending its Rules of Practice and its Rules Relating to Investigations. The revised Rules of Practice enhance the transparency of the Commission’s enforcement proceedings, specifying that the Commission can accept an offer of settlement by order of the Commission and establishing requirements for the form and content of recommendation memos provided by the Division of Enforcement to the Commission when recommending an offer of settlement. The revised Rules Relating to Investigations revise the applicable procedures when the Division of Enforcement notifies persons who may be named in an enforcement action, including that the notification or confirmation of the notice be in writing.

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

FOR FURTHER INFORMATION CONTACT: James G. Wheaton, Special Counsel to the Director of Enforcement, Division of Enforcement, at (646) 746-9752 or jwheaton@cftc.gov, Commodity Futures Trading Commission, 290 Broadway 6th Floor, New York, NY 10007.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission is amending its rules of practice and its rules relating to investigations. The

Commission is authorized to promulgate this rule under section 2(a)(12) of the Commodity Exchange Act (“the Act”).¹

The revisions fall into five categories: (1) revisions in part 10 to clarify the definition of adjudicatory proceedings to include an order by the Commission instituting proceedings pursuant to the Act, making findings, and imposing remedial sanctions; (2) revisions to part 10 removing references to regulations that are no longer effective or to communications by facsimile machine; (3) revisions to part 10 to clarify that the Commission can accept an offer of settlement by an order; (4) revisions to part 10 establishing certain requirements for the form of the recommendation memorandum that the Division of Enforcement (“Division”) provides to the Commission when recommending that the Commission accept an offer of settlement; and (5) revisions to appendix A to part 11 detailing the procedures to be used when the Division chooses to inform persons who may be named in a proposed enforcement proceeding of the nature of the allegations pertaining to them as well as the procedure to be followed by such persons in submitting a written response to the Division.

I. Revisions to Part 10 Rules of Practice

The Commission is revising part 10, Rules of Practice, in four ways.

First, the Commission is revising the definition of adjudicatory proceedings in § 10.2(b) to clarify that adjudicatory proceedings under the Rules of Practice include the issuance of an order by the Commission instituting proceedings pursuant to the Act, making findings, and imposing remedial sanctions.

Second, the Commission is revising § 10.1(i) to remove a reference to no longer effective provisions of part 13 of the Commission’s regulations.

¹ Section 2a(11), 7 U.S.C. 2a(12), authorizes the Commission to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

Third, the Commission is removing references to communications by fax from §§ 10.4 and 10.12.

Fourth, the Commission is revising § 10.108(d) to clarify that in lieu of adjudicatory proceedings under subpart B of part 10, the Commission may accept an offer of settlement by order instituting proceedings pursuant to the Act, and making findings and imposing remedial sanctions, and that the Commission can determine to accept an offer of settlement in lieu of an adjudicatory proceeding either by Commission meeting or by the Commission's seriatim process. To ensure that the Commission has the information necessary to evaluate a matter, the revisions require the Division to include certain information with its recommendation that the Commission accept an offer of settlement. In particular, the revisions require the Division must provide an objective memorandum that adheres to the applicable rules of professional conduct, provides a comprehensive explanation of the factual and legal foundation for the recommendation, and distinguishes unfavorable facts or legal precedents. In addition, to ensure a complete and accurate administrative record, the Division's recommendation memorandum must be supported by citations to evidence in the investigative record or to stipulations by the parties, and legal arguments must be supported by points and authorities.

II. Revisions to Part 11 Rules Relating to Investigation

Appendix A to Part 11—Informal Procedure Relating to the Recommendation of Enforcement Proceedings

The Commission is making several revisions to this procedure, which applies to when the Division, in its discretion, chooses to inform persons who may be named in a proposed enforcement proceeding of the nature of the allegations pertaining to them. While the Division can decide whether it will provide such notice, the revised procedure details the requirements for such notice if given. Under the revised appendix A, the notice should be provided in writing when possible, and, if given orally, is to be followed

by written confirmation. The revisions promote transparency to entities or individuals who may be named in a proposed enforcement proceeding by requiring that the written notice or confirmation of oral notice identifies the specific charges that the Division has made preliminary determinations to recommend to the Commission. The revisions also state that the Division may provide information regarding the facts and circumstances that form the basis for the recommendation by referring to specific evidence.

Establishing that the Division can choose to disclose specific evidence learned during the investigation promotes transparency and enhances the Division's ability to have productive dialogues with the entity or individual who may be named.

While the Division still maintains the discretion to advise entities or individuals who may be named that they may submit a written statement prior to consideration of a staff recommendation, the revised appendix A modifies the procedures surrounding such a response. The revised appendix A provides that a potential respondent shall have at least 30 days to submit a response, rather than having to submit within 14 days as required by the prior version of appendix A. The amended procedures only permit the Division to require a submission be made in a shorter period if there is both good cause and the approval of specified senior attorneys, a change from the prior version which did not explicitly require good cause. This revision is designed to ensure that respondents have adequate time to respond. The revised appendix A also states that a person submitting a written statement may request that the statement be provided to the Commission "promptly," a requirement that may expedite consideration of the matter in some cases and, when used, may inform the Commission about the pending matter at an earlier stage than the previous Appendix A, which contemplated providing respondent responses to the Commission when the Division made its recommendation to the Commission rather than when the response was initially received. Finally, the Revision states that all written statements will be forwarded to the Commission, a change from the

previous version which only required that written submissions be forwarded to the Commission upon request of the submitter. This provision helps to ensure that the Commission has an accurate and complete record on which to base decisions if the Division ultimately does recommend the commencement of an enforcement action.

III. Related Matters

A. Notice Requirement

The Administrative Procedure Act (“APA”)² requires federal agencies to publish a notice of proposed rulemaking and provide an opportunity for public comment before issuing a new rule. Rules are exempt from notice and comment if they are interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.³ The Commission has determined that this exception applies. These amendments apply to agency procedure and practice, as they pertain to the procedures by which the Commission settles adjudicatory proceedings, the Division of Enforcement makes settlement recommendations to the Commission, and the Division of Enforcement, in its discretion, makes persons aware of potential allegations against them. Furthermore, an agency may also issue a new rule without a pre-publication public comment period when it for “good cause” finds that prior notice and comment is “impracticable, unnecessary, or contrary to the public interest.”⁴ If made effective immediately, these amendments to parts 10 and 11 will promote efficiency and facilitate the Commission’s core mission without imposing any new burden on market participants or the public.

B. Regulatory Flexibility Act

² 5 U.S.C. 553 et seq.

³ 5 U.S.C. 553(b)(3)(A).

⁴ 5 U.S.C. 553(b)(3)(B).

The Regulatory Flexibility Act⁵ requires the Commission to consider whether the regulations it adopts will have a significant economic impact on a substantial number of small entities. The Commission is obligated to conduct a regulatory flexibility analysis for any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act or any other law.⁶ This rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act.⁷ Accordingly, the Commission is not required to conduct a regulatory flexibility analysis for this rulemaking.

C. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”)⁸ imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information. This proposed rule does not contain any new collection of information requirements within the meaning of the PRA. Accordingly, the requirements imposed by the PRA are not applicable to this rule.

D. Cost-Benefit Considerations

Section 15(a) of the CEA⁹ requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated considering 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

⁵ 5 U.S.C. 601 et seq.

⁶ 5 U.S.C. 601(2).

⁷ See supra notes 3 and 4.

⁸ 5 U.S.C. 3501 et seq.

⁹ 7 U.S.C. 19(a).

public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The Commission may, in its discretion, give greater weight to any of the five enumerated areas of concern, and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest, or to effectuate any of the provisions, or to accomplish any of the purposes, of the CEA. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The Commission identifies and considers the benefits and costs of the final rule relative to the baseline of those generated by the current statutory and regulatory framework applicable to the issues addressed by this final rule, i.e., the current status quo. The baseline is the current rules of practice in part 10 with regards to adjudicatory proceedings and appendix A to part 11 detailing the procedures to be used when the Division chooses to inform entities or individuals who may be named in a proposed enforcement proceeding and the procedures surrounding the submission of a response prior to consideration of a staff recommendation.

As discussed above, the Commission is revising part 10 to: (1) clarify the definition of adjudicatory proceedings to include in that definition an order by the Commission instituting proceedings pursuant to the Act, making findings, and imposing remedial sanctions; (2) remove references to regulations that are no longer effective or to communications by facsimile machine; (3) clarify that the Commission can accept an offer of settlement by an order; (4) establish certain requirements for the form of the recommendation memorandum that the Division provides to the Commission when recommending that the Commission accept an offer of settlement. In addition, the Commission is revising appendix A to part 11 detailing the procedures to be used when the Division chooses to inform persons who may be named in a proposed enforcement

proceeding of the nature of the allegations pertaining to them as well as the procedure to be followed by such persons in submitting a written response to the Division.

The proposed amendments to parts 10 and 11 relate solely to agency organization, procedure and practice. The clarification of § 10.2(b) should reduce any burdens on market participants caused by any confusion interpreting the current definition. The amendment to § 10.108 is procedural regarding internal Commission procedures and does not impose any new burdens on outside entities. The amendment to the part 11 appendix reduces burdens by providing more time for potential respondents to submit responses, and by providing more clarity regarding potential charges and evidence. Taken collectively, these amendments will have no cost to the market or the public, and there is only a *de minimis* cost for Commission staff to provide documents already within the Division of Enforcement's control or produce a recommendation memorandum in a particular format. The Commission has considered the costs and benefits of this amendment and has concluded that, with regard to the public interest consideration, the rule is fully consistent with the public interest and with the requirements and prohibitions of the Commodity Exchange Act.

E. 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 objectives of the CEA in issuing any order or adopting any Commission rule or regulation.¹⁰ The Commission does not anticipate that the proposed amendments to parts 10 and 11 will result in anticompetitive behavior because the Commission would simply be updating certain internal procedures and in some cases providing potential respondents to enforcement action with additional clarity

¹⁰ 7 U.S.C. 19(b).

(and potentially additional time) to respond to a request from the Division of Enforcement. Accordingly, the Commission has determined that the amendments are not anticompetitive and have no anticompetitive effects. Because the Commission has made this determination, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects

17 CFR Part 10

Administrative practice and procedure, Commodity futures.

17 CFR Part 11

Administrative practice and procedure, Commodity futures, Investigations, Rules relating to investigations.

For the reasons set forth in the preamble, and pursuant to the authority contained in sections 2a and 8a of the Commodity Exchange Act, 7 U.S.C. 2(a) and 8a, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 10—RULES OF PRACTICE

1. The authority citation for part 10 continues to read as follows:

Authority: Pub. L. 93-463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 2(a)(12).

2. In § 10.1, revise paragraph (i) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(i) Public rulemaking, except as specifically made applicable by the Rules Relating to Public Rulemaking Procedures.

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3. In § 10.2, revise paragraph (b) to read as follows:

§ 10.2 Definitions.

* * * * *

(b) *Adjudicatory proceeding* means a judicial-type proceeding leading to the formulation of a final order, including an order by the Commission instituting proceedings pursuant to the Act, making findings, and imposing remedial sanctions;

* * * * *

4. Revise § 10.4 to read as follows:

§ 10.4 Business address; hours.

The Office of Proceedings is located at the Commission's Washington, DC headquarters. Emails must be sent to *PROC_filings@cftc.gov*. The office is open from 8:15 a.m. to 4:45 p.m., Eastern Time, Monday through Friday, except on federal holidays.

5. In § 10.12, revise paragraph (d)(1) to read as follows:

§ 10.12 Service and filing of documents; form and execution.

* * * * *

(d) * * *

(1) All documents which are required to be served upon a party shall be filed concurrently with the Proceedings Clerk. A document shall be filed by delivering it in person or by first-class mail or a more expeditious form of United States mail or by overnight or similar commercial delivery service to Proceedings Clerk, Office of Proceedings at the Commission's Washington, DC headquarters; or emailing it to *PROC_Filings@cftc.gov* in accordance with the conditions set forth in paragraph (a)(2) of this section.

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6. In § 10.108, revise paragraph (d) to read as follows:

§ 10.108 Settlements.

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(d) *Acceptance of offer by the Commission.* The Commission will accept an offer of settlement only by issuing its opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Proceedings Clerk. In lieu of the procedure to institute adjudicatory proceedings set forth in subpart B of this part, the Commission may determine to accept an offer of settlement by order instituting proceedings pursuant to the Act, making findings, and imposing remedial sanctions, whether by Commission meeting or by disposition of business by seriatim Commission consideration as set forth in § 140.12 of this chapter. The Division's recommendation to accept an offer of settlement shall be set forth in an objective memorandum to the Commission that adheres to the applicable rules of professional conduct and provides a comprehensive explanation of the recommendation's factual and legal foundation and distinguishes unfavorable facts or legal precedent. To ensure an accurate and complete administrative record, the statement of facts must be supported by citations to evidence in the investigative record or stipulations by the parties, and the legal argument must be supported by points and authorities.

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PART 11—RULES RELATING TO INVESTIGATIONS

7. The authority citation for part 11 continues to read as follows:

Authority: 7 U.S.C. 4a(j), 9, 12, 12a(5) and 15.

8. Revise appendix A to part 11 to read as follows:

Appendix A to Part 11—Informal Procedure Relating to the Recommendation of Enforcement Proceedings

The Division of Enforcement ("Division"), in its discretion, may inform persons who may be named in a proposed enforcement proceeding of the nature of the allegations pertaining to them. Such notice should be in writing when possible, and if given orally, it

should be followed promptly by a written confirmation. The written notice or written confirmation of an oral notice should identify the specific charges the Division has made a preliminary determination to recommend to the Commission. The Division may also refer to specific evidence regarding the facts and circumstances that form the basis for the Division's recommendation. The Division, in its discretion, may advise such persons that they may submit a written statement prior to the consideration by the Commission of any staff recommendation for the commencement of such proceeding. Unless for good cause, and otherwise provided for by either the Director or a Deputy Director of the Division, such written statements shall have at least 30 days for submission after persons are informed by the Division of Enforcement of the nature of the proposed allegations pertaining to them and shall be no more than 20 pages, double spaced on 8 1/2 by 11 inch paper, setting forth their views of factual, legal or policy matters relevant to the commencement of an enforcement proceeding. Any statement of fact included in the submission must be sworn to by a person with personal knowledge of such fact. Statements shall be forwarded to the Director, Division of Enforcement, at the Commission's Washington, DC headquarters, with copies to the staff conducting the investigation, shall clearly identify the specific investigation, and, if desired, may request that the statement be forwarded to the Commission promptly. Similarly, persons who become involved in an investigation, and submit a written statement on their initiative, should follow the relevant procedures described in this appendix. In the event the Division recommends the commencement of an enforcement proceeding to the Commission, the Division shall forward any such written statement to the Commission promptly. The Commission may, in its discretion, consider all, any portion or none of the submission when it considers the staff recommendation to commence an enforcement proceeding.

Issued in Washington, DC, on December 1, 2025, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

**Appendix to Amendments to CFTC Rules of Practice and Rules Relating to
Investigations – Commission Voting Summary**

On this matter, Acting Chairman Pham voted in the affirmative. No
Commissioner voted in the negative.

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