



## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 10

### Rescission of Policy Relating to the Acceptance of Settlements in Administrative and Civil Proceedings

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is rescinding a policy contained in an appendix to its regulations concerning acceptance of settlements in administrative and civil proceedings. This policy is commonly understood to limit a respondent’s or defendant’s ability to deny allegations following settlement.

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

**FOR FURTHER INFORMATION CONTACT:** Stephen Andrews, Deputy General Counsel for Regulation, [sdandrews@cftc.gov](mailto:sdandrews@cftc.gov), 202-308-7563, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

Since 1998,<sup>1</sup> the Commission has maintained a policy, codified in appendix A to part 10 of its rules of practice for adjudicatory proceedings, 17 CFR part 10, that the Commission will not accept settlement<sup>2</sup> offers where the respondent or defendant

---

<sup>1</sup> Rules of Practice, 63 FR 55784, 55796 (Oct. 19, 1998); Technical Correction, 64 FR 30902, 30903 – 30904 (June 9, 1999).

<sup>2</sup> We use the term “settlement” to refer to the resolution of enforcement actions by consent in which the Commission and a party against whom it has brought an action agree to terms to end that action, including agreed-upon sanctions. Settlements can include entry into consent judgments in federal district court and the acceptance of settlement offers in an order issued in an administrative adjudication.

continues to deny the allegations, or the findings of fact and conclusions of law. For the reasons explained below, the Commission now rescinds this policy and repeals appendix A of part 10.

## **I. Background**

When the Commission exercises its authority to investigate and bring enforcement actions,<sup>3</sup> it does not litigate every action to judgment. Like all parties to litigation, the Commission and litigant against whom it brings a federal district court action or agency adjudication may agree to settle.<sup>4</sup> The Commission's decision to settle depends on a range of factors, including the Commission's judgment that obtaining an immediate result by settlement better serves the public interest than expending the resources and accepting the risk that comes with fully litigating the matter. Similarly, a defendant's decision to settle may turn on numerous factors.

In a typical Commission settlement, a defendant in federal district court signs a consent<sup>5</sup> that describes the terms on which the parties have agreed to settle, or, in an administrative action, a respondent submits an offer of settlement that contains those terms. These documents reflect the defendant's (or respondent's) agreement and representation that the defendant (or respondent) is entering into the settlement knowingly and voluntarily. For actions in federal district court, the Commission (sometimes jointly with the defendant) will then ask the court to enter a consent judgment (or consent order) that incorporates the terms of the consent and to retain continuing

---

<sup>3</sup> 7 U.S.C. 9, 15.

<sup>4</sup> *CFTC v. Schor*, 478 U.S. 833 (1986) (establishing that the CFTC has authority to adjudicate cases, which includes the implied authority to reach settlements in both administrative proceedings and enforcement actions).

<sup>5</sup> The consent is typically incorporated into a proposed consent order signed by the defendant and presented to the Commission for its consideration. If approved by the Commission, it is signed by a Commission Division of Enforcement attorney and presented to the federal district court for its consideration.

jurisdiction.<sup>6</sup> For administrative adjudications, the Commission accepts an offer of settlement by issuing an opinion and order, which makes findings, imposes remedial sanctions, and incorporates the terms of the offer.

In 1998, the Commission adopted appendix A to part 10.<sup>7</sup> Appendix A set forth a policy not to accept any offer of settlement in an administrative or civil proceeding if the respondent or defendant wished to continue to deny the allegations of the Commission's complaint.<sup>8</sup> The Commission reasoned that "[i]n accepting a settlement and entering an order finding violations . . . the Commission makes uncontested finding of fact and conclusions of law. The Commission does not believe it would be appropriate for the agency to be making such uncontested findings of violations if the party against whom the uncontested findings are to be entered is continuing to deny the alleged misconduct."<sup>9</sup> By limiting the circumstances under which the Commission will accept a settlement offer, this policy binds the staff of the Commission's Division of Enforcement in settlement negotiations.

The Commission's "neither-admit-nor-deny" settlements typically take the form of a formal Consent Order or Order Instituting Proceedings issued by the Commission. In these orders, the defendant or respondent agrees to penalties without acknowledging that they committed the alleged violations.<sup>10</sup> More specifically, defendants and respondents agree, among other things, not to make "any public statement denying, directly or indirectly any findings or conclusions" in the Order or "creating...the

---

<sup>6</sup> Consent judgments are "compromises in which the parties give up something they might have won in litigation and waive their rights to litigation." *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 235 (1975). They "embod[y] an agreement of the parties and thus in some respects [are] contractual in nature," but they are also "enforceable as . . . judicial decree[s]." *Texas v. New Mexico*, 602 U.S. 943, 953 (2024).

<sup>7</sup> Rules of Practice, 63 FR 55784, 55790 (Oct. 19, 1998).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., *In re Options Clearing Corp.*, CFTC No. 23-06 (Feb. 16, 2023); *In re Citigroup Global Markets, Inc.*, CFTC No. 25-02 (Sept. 4, 2025); *In re Barclays Bank PLC*, CFTC No. 24-39 (Sept. 30, 2024).

impression that this Order is without a factual basis.”<sup>11</sup> The neither-admit-nor-deny provisions, do not, however, apply to defendants’ and respondents’ testimonial obligations, and the provisions do not affect their ability to take legal or factual positions in litigation and other legal proceedings to which the Commission is not a party, including parallel civil actions.<sup>12</sup>

When the Commission agrees to settlements that contain neither-admit-nor-deny provisions, the Commission has only a limited judicial remedy in the event a defendant breaches the settlement agreement by publicly denying allegations. In the event of a public denial, the Commission could, among other options, allege a breach of contract and initiate contempt proceedings or ask a court to vacate the settlement, returning the case to active litigation and permitting the Commission to prove its claims.<sup>13</sup> And, as with all parties to a contract who are faced with a breach, the Commission may forgo this remedy, opting not to dedicate resources to reviving a previously settled case. Moreover, federal district courts have discretion to deny the Commission’s request to return a case to the active docket in the event the Commission does seek relief in the wake of a breach. The Commission is not aware of any instance where the Commission has sought to reopen a federal district court action or administrative adjudication following a violation of a neither-admit-nor-deny provision, and there are no reported opinions where a court has ruled upon such a motion.

---

<sup>11</sup> *Id.*

<sup>12</sup> Language to this effect is used in settlement orders related to the Commission. *See, e.g., In re Deutsche Bank AG, et al.*, CFTC. No. 18-06 (Jan. 29 2018); *CFTC v. First Bristol Grp., Inc.*, No. 02-80696-CIV (S.D. Fla. July 2, 2003).

<sup>13</sup> There is a parallel procedure in administrative adjudications. In that context, when the Commission has accepted offers to settle, it has done so pursuant to 17 CFR 10.108. Respondents have agreed not to publicly deny the allegations in the order instituting proceedings, and they further agreed that if they breached that agreement, Division of Enforcement staff could ask the Commission to reopen the action against them.

Additionally, the Commission has received a petition to repeal its neither-admit-nor-deny requirement.<sup>14</sup> Although no party has challenged the Commission’s policy, there have been several challenges to the Securities and Exchange Commission’s (“SEC”) neither-admit-nor-deny settlements.<sup>15</sup>

## **II. Discussion**

### **A. The Commission is rescinding appendix A to part 10.**

After further consideration of the existing policy, the Commission rescinds appendix A to part 10. The Commission initiates enforcement actions only after determining that information obtained in an investigation indicates that a violation of its rules and/or regulations occurred or is about to occur.<sup>16</sup> The commencement of such an enforcement action in federal district court (or institution of an administrative proceeding) reflects the Commission’s intention to prove the facts of the case as alleged based on the results of that investigation.<sup>17</sup> When the Commission chooses settlement to serve the public interest by obtaining a more-certain and faster result with less expenditure of resources and less risk, it forecloses its ability to obtain a fully adjudicated decision after a contested proceeding.

When the Commission adopted appendix A to part 10, it stated: “In accepting a settlement and entering an order finding violations . . . the Commission makes uncontested findings of fact and conclusions of law. The Commission does not believe it would be appropriate for the agency to be making such uncontested findings of violations if the party against whom the uncontested findings are to be entered is continuing to deny

---

<sup>14</sup> New Civil Liberties Alliance, Petition for Rulemaking to Amend the Rule Restricting Speech Set Forth in 17 CFR Part 10, Appendix A (July 18, 2019), <https://nclalegal.org/wp-content/uploads/2019/07/2019-07-18-Petition-for-Repeal-of-Gag-Rule-CFTC-FINAL-As-Filed.pdf>.

<sup>15</sup> *SEC v. Romeril*, 15 F.4th 166 (2d Cir. 2021); *SEC v. Novinger*, 40 F.4th 297 (5th Cir. 2022); *SEC v. Novinger*, 96 F.4th 774 (5th Cir. 2024); *Powell v. SEC*, 149 F.4th 1029 (9th Cir. 2025); *Cato v. SEC*, 4 F.4th 91 (D.C. Cir. 2021).

<sup>16</sup> 7 U.S.C. 9, 15.

<sup>17</sup> In an administrative proceeding, the Commission serves in an adjudicatory capacity.

the alleged misconduct.”<sup>18</sup> Yet experience has taught that the negative effect on the public interest from such denials may be minimal. Members of the public, regulated entities, and market participants typically understand that settlements are often reached for pragmatic reasons, including avoiding the expense, uncertainty, and delay associated with litigation. The Commission also recognizes that the policy itself may create the incorrect impression that it is trying to protect itself from criticism.<sup>19</sup> Even if that is not the Commission’s intent, such a perception could undermine public confidence in the agency’s commitment to transparency, openness, and fair process.

Four additional reasons support the Commission’s rescission of appendix A to part 10.

First, when the Commission agrees to settlements that contain neither-admit-nor-deny provisions, the Commission has only a limited judicial remedy in the event a defendant breaches the settlement agreement by publicly denying allegations. In the event of a public denial, the Commission could allege a breach of contract and initiate contempt proceedings, or ask a court to vacate the settlement, returning the case to active litigation and permitting the Commission to prove its claims.<sup>20</sup> In practice, however, the benefits of these remedies have proven limited. The Commission is not aware of any instance in which it invoked these measures, nor any case in which a court has granted such relief following a public denial.

Moreover, there is a built-in temporal disincentive to invoking these remedies. As the time between the settlement and a denial grows, the Commission is less likely to dedicate resources to reopen the case, because the passage of time and concomitant

---

<sup>18</sup> Rules of Practice, 63 FR 55784, 55790 (Oct. 19, 1998).

<sup>19</sup> In *SEC v. Powell*, the Ninth Circuit held that the SEC’s “neither-admit-nor-deny” policy, 17 CFR 202.5(e), does not violate the First Amendment by limiting a defendant’s speech, even if denying allegations undermines agency confidence. The court clarified the policy’s purpose is administrative, requiring the SEC to prove allegations in court if a defendant refuses to settle without admitting wrongdoing. *Powell*, 149 F.4th at 1044.

<sup>20</sup> See also *supra* note 14.

fading of memories and loss of evidence renders the allegations harder to prove.

Similarly, as more time elapses from the entry of a consent judgment containing a no-deny provision, a court may be less likely to grant the Commission's request to reopen an older case because of comparable procedural and evidentiary concerns. Given that the Commission has not sought to use this remedy, its theoretical benefits do not justify its retention.

Second, technological changes in communication, particularly the use of social media, have made the policy more challenging to implement. Appendix A to part 10 covers public denials of allegations. But the line between public and private statements is not always clear. For example, social media interactions are often intended for a private, self-selected community but are still visible to dozens of individuals.<sup>21</sup> Rather than devote resources to determining whether such statements would constitute a violation of a neither-admit-nor-deny provision, the Commission chooses to repeal appendix A to part 10.

Third, eliminating appendix A to part 10 aligns the Commission with the majority of federal agencies.<sup>22</sup> Most federal agencies – including the Department of Justice – have not adopted a comparable neither-admit-nor-deny policy. The absence of these policies has proven immaterial to those agencies' ability to settle enforcement actions without negative consequence. Moreover, the SEC recently rescinded its “neither-admit-nor-deny” policy citing many of the rationales that the Commission is relying upon here.<sup>23</sup>

---

<sup>21</sup> Moreover, with regards to the SEC neither-admit-nor-deny provision, the Ninth Circuit noted in upholding the provision against a facial constitutional challenge that the language of some consents “could be read to sweep more broadly” than the provision by covering public statements that are “indirectly” denying allegations or “creating the impression” that the allegations are without a factual basis. *Powell*, 149 F.4th at 1044.

<sup>22</sup> See Verity Winship & Jennifer K. Robbennolt, *Admissions of Guilt in Civil Enforcement*, 102 MINN. L. REV. 1077 (2018) (discussing differences in settlement practices between federal regulators).

<sup>23</sup> *Rescission of Policy Regarding Denials in Settlements of Enforcement Actions*, 91 FR 29892 (May 21, 2026).

All of these examples fortify the Commission’s conclusion that rescinding appendix A to part 10 will not harm the public interest.

Fourth, rescinding appendix A to part 10 gives the Commission more flexibility in settling enforcement actions. This flexibility empowers the Commission to conserve resources and provide certainty. It may also speed the return of money to victims.<sup>24</sup> The current policy precludes the Commission from accepting settlements that lack a neither-admit-nor-deny provision. This restriction bars settlements with defendants who do not wish to sign a provision that prevents them from ever denying liability. The rescission will allow the Commission to better structure settlements, resulting in collectible sanctions that can be returned to victims more efficiently.<sup>25</sup>

**B. The Commission will not seek to enforce existing neither-admit-nor-deny provisions.**

In light of the rescission of appendix A to part 10, and for the same reasons, the Commission will not enforce existing neither-admit-nor-deny provisions in settlements that have already been entered. If a settling defendant or respondent has previously agreed to a neither-admit-nor-deny provision, and the defendant or respondent then breaches the terms of that neither-admit-nor-deny provision, the Commission will not allege breach of contract or attempt to reopen an otherwise settled case. Rather, in the event of breach, the Commission will take no action to ask a federal district court to

---

<sup>24</sup> *United States v. Armour & Co*, 402 U.S. 673, 681 (1971) (parties settle “after careful negotiation” and reach an “agreement on [a consent’s] precise terms,” saving “themselves the time, expense, and inevitable risk of litigation,” but also giving “up something they might have won had they proceeded with the litigation”); *SEC v. Citigroup Glob. Mkts.*, 752 F.3d 285, 295 (2d Cir. 2014) (settlement provides “parties with a means to manage risk”).

<sup>25</sup> The Commission’s rescission of appendix A to part 10 does not affect its discretion to settle with defendants who decline to admit facts or liability, or its discretion to negotiate for admissions as part of a settlement. Moreover, there is a subset of cases where the Commission settles (or plans to settle) with a defendant or respondent that is the subject of a parallel criminal proceeding arising from the same or similar conduct, and where the defendant or respondent has pleaded, or is expected to plead, guilty, or been convicted. In those instances, there have been admissions or a finding of criminal liability. For these types of cases, the Commission may continue to address admissions and denials in settlement agreements to ensure consistency between the Commission settlement and the resolution of the parallel matter.

vacate the settlement (or to reopen an administrative adjudicatory proceeding) or to hold the defendant or respondent in contempt in connection with the settlement agreement and the limited relief the Commission has pursuant to its terms.

## **II. Related Matters**

### **A. Notice and Effective Date**

The Administrative Procedure Act (“APA”)<sup>26</sup> 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.<sup>27</sup> The Commission has determined that this exception applies. These amendments represent a general statement of Commission policy and relate solely to agency organization, procedure, and practice.<sup>28</sup> Therefore, the provisions of the APA, which generally require notice or proposed rulemaking and provide other opportunities for public participation, are inapplicable. In addition, the APA generally requires that an agency publish a substantive rule in the *Federal Register* 30 days before it becomes effective,<sup>29</sup> but this requirement does not apply to “interpretive rules and statements of policy,”<sup>30</sup> such as this one. Therefore, this final rule is effective upon publication in the *Federal Register*. Moreover, the Commission finds that delaying the effective date of this rescission could create incentives for parties to delay settlement until the rescission takes effect. As a result, the Commission believes that delaying the effectiveness of this

---

<sup>26</sup> 5 U.S.C. 553 *et seq.*

<sup>27</sup> 5 U.S.C. 553(b)(3)(A).

<sup>28</sup> The Commission made a similar finding in 1998 when it adopted appendix A to part 10 without notice and comment. *See* 63 FR 55791 (Oct. 19, 1998).

<sup>29</sup> 5 U.S.C. 553(d).

<sup>30</sup> 5 U.S.C. 553(d)(2).

rule is contrary to the public interest and finds “good cause” to make the rescission effective upon publication in the *Federal Register* under 5 U.S.C. 553(d).<sup>31</sup>

### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities.<sup>32</sup> 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 APA or any other law.<sup>33</sup> This rulemaking is excepted from the public rulemaking provisions of the APA.<sup>34</sup> Accordingly, the Commission is not required to conduct a regulatory flexibility analysis for this rulemaking.

### **C. 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.<sup>35</sup> This 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 rule.

### **D. 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’s contemplated action.<sup>36</sup>

---

<sup>31</sup> 5 U.S.C. 553(d)(3).

<sup>32</sup> 5 U.S.C. 601 *et seq.*

<sup>33</sup> 5 U.S.C. 603(a).

<sup>34</sup> 5 U.S.C. 553(b)(3)(B).

<sup>35</sup> 5 U.S.C. 3501 *et seq.*

<sup>36</sup> 7 U.S.C. 19(a).

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.<sup>37</sup> The proposed revisions relate solely to agency organization, procedure, and practice. Therefore, the Commission finds that the considerations enumerated in section 15(a)(2) of the CEA are not applicable here.

#### **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 CEA's objectives in issuing any order or adopting any Commission rule or regulation.<sup>38</sup> The Commission does not anticipate that appendix A to part 10's rescission will have anticompetitive effects. Instead, the Commission anticipates that the policy's rescission will allow the Commission more flexibility to settle enforcement actions, thereby increasing the agency's ability to collect sanctions and return monies to victims while also conserving resources.

#### **F. Executive Orders**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a

---

<sup>37</sup> 7 U.S.C. 19(a)(2).

<sup>38</sup> 7 U.S.C. 19(b).

sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

The Office of Management and Budget has determined that this action is not a significant regulatory action as defined in Executive Order 12866, as amended, and therefore it was not subject to Executive Order 12866 review.

Pursuant to the Congressional Review Act,<sup>39</sup> the Office of Information and Regulatory Affairs has designated these amendments as not a "major rule," as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 17 CFR Part 10**

Administrative practice and procedure, Authority delegations (Government agencies), Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 10 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).

#### **Appendix A to Part 10 [Removed]**

2. Remove Appendix A to Part 10—Commission Policy Relating to the Acceptance of Settlements in Administrative and Civil Proceedings.

---

<sup>39</sup> 5 U.S.C. 801 – 808.

Issued in Washington, DC, on June 4, 2026, by the Commission.

Christopher Kirkpatrick,

*Secretary of the Commission.*

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

**Appendix to Rescission of Policy Relating to the Acceptance of Settlements in  
Administrative and Civil Proceedings – Commission Voting Summary**

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

[FR Doc. 2026-11466 Filed: 6/5/2026 8:45 am; Publication Date: 6/8/2026]