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Part XLVIII

Commodity Futures Trading Commission

Semiannual Regulatory Agenda

COMMODITY FUTURES TRADING COMMISSION (CFTC)

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

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

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Assistant Secretary for FOIA Matters, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418-5096, edonovan@cftc.gov.

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

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

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

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

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

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

The Commission's spring 2003 regulatory flexibility agenda is set forth below.

Issued in Washington, DC on March 11, 2003, by the Commission.

Jean A. Webb,
Secretary of the Commission.

Commodity Futures Trading Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3800	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers	3038-AB64
3801	Regulation of Hybrid Instruments	3038-AB69
3802	Use of Broker-Dealers, Depository Institutions, and Farm Crediting System Institutions as Intermediaries on Derivatives Transaction Execution Facilities	3038-AB70
3803	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons; Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices	3038-AB75
3804	Treatment of Foreign Futures or Foreign Options Secured Amount	3038-AB96
3805	Exclusion for Certain Otherwise Regulated Persons From Definition of Commodity Pool Operator; Exemption From Certain Part 4 Requirements for Commodity Pool Operators and Commodity Trading Advisors	3038-AB97

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3806	Performance Disclosures for Commodity Trading Advisors and Commodity Pool Operators	3038-AB39
3807	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States	3038-AB45
3808	Customer Identification Program for Futures Commission Merchants and Introducing Brokers	3038-AB90
3809	Allocation of Bunched Orders	3038-AB93

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

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

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

CFTC

Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3810	Denomination of Customer Funds and Location of Depositories	3038-AB31
3811	Reporting Levels for Large Trader Reports; TRAKRS	3038-AB91

Commodity Futures Trading Commission—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3038-AB34	Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term “Commodity Pool Operator”	01/29/2003	Merged With 3038-AB97
3038-AB40	Public Reporting by Operators of Certain Large Commodity Pools—Regulations 4.7, 4.12, and 4.27	03/07/2003	Withdrawn
3038-AB61	Trade Options on Enumerated Agricultural Commodities	03/07/2003	Withdrawn
3038-AB72	Exemption From Compliance with the Criterion for Linked and Coordinated Clearing	03/07/2003	Withdrawn
3038-AB74	Compliance Date for Security Futures Products To Be Cleared by a Clearing Agency That Has Linked and Coordinated Clearing With Other Clearing Agencies	03/07/2003	Withdrawn
3038-AB78	Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices	03/07/2003	Merged With 3038-AB75

Commodity Futures Trading Commission (CFTC)

Proposed Rule Stage

3800. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6f

CFR Citation: 17 CFR 1.17

Legal Deadline: None

Abstract: The Commission intends to propose amendments to Rule 1.17 that would adopt a risk-based capital requirement for futures commission merchants.

Timetable:

Action	Date
NPRM	06/00/03
NPRM Comment Period End	08/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AB64

3801. REGULATION OF HYBRID INSTRUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is required, after consulting with and obtaining the concurrence of the Board of Governors of the Federal Reserve System, to prescribe regulations to govern hybrid instruments if it determines that it is in the public interest and consistent with the Commodity Exchange Act, and the product is not predominantly a banking product under the test enumerated in title IV of the Commodity Futures Modernization Act of 2000.

Timetable:

Action	Date
NPRM	05/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AB69

3802. USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDITING SYSTEM INSTITUTIONS AS INTERMEDIARIES ON DERIVATIVES TRANSACTION EXECUTION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

CFTC

Proposed Rule Stage

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is required to coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulators (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to implement the provisions of the Commodity Futures Modernization Act of 2000 relating to the use of broker-dealers, depository institutions, and farm credit system institutions as intermediaries on derivatives transaction execution facilities.

Timetable:

Action	Date
NPRM	01/00/04

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038-AB70

3803. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS; REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON-NARROW-BASED INDICES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, December 21, 2001, Within one year after the date of enactment of the Commodity Futures Modernization Act of 2000.

Abstract: The Commission and the Securities and Exchange Commission are required to jointly issue (1) rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of security futures products traded on or subject to the rules of a foreign

board of trade to United States persons, and (2) rules and regulations that set forth the requirements for foreign stock index contracts to qualify as non-narrow-based indices.

Timetable:

Action	Date
NPRM	01/00/04

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Related RIN: Related To 3038-AB78

RIN: 3038-AB75

3804. TREATMENT OF FOREIGN FUTURES OR FOREIGN OPTIONS SECURED AMOUNT

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6

CFR Citation: 17 CFR 30.7

Legal Deadline: None

Abstract: The Commission intends to propose an amendment to Rule 30.7 to provide that a futures commission merchant that holds funds on behalf of customers for trading futures and options on foreign markets may invest such funds in certain permitted investments. The proposal would establish investments that are comparable to the investments that a futures commission merchant may make with customer funds deposited for trading on United States markets pursuant to Rule 1.25.

Timetable:

Action	Date
NPRM	09/00/03

Action	Date
NPRM Comment Period End	11/00/03

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038-AB96

3805. • EXCLUSION FOR CERTAIN OTHERWISE REGULATED PERSONS FROM DEFINITION OF COMMODITY POOL OPERATOR; EXEMPTION FROM CERTAIN PART 4 REQUIREMENTS FOR COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1a; 7 USC 2; 7 USC 6b; 7 USC 6c; 7 USC 6l to 6o; 7 USC 12a; 7 USC 23

CFR Citation: 17 CFR 4.7; 17 CFR 4.12 to 4.14; 17 CFR 4.21; ...

Legal Deadline: None

Abstract: The Commission is proposing to amend and adopt new rules under part 4 of its regulations. The proposed rules would: (1) expand the availability of the current exclusion from the CPO definition; (2) establish additional CPO and CTA registration exemptions; (3) facilitate CPO and CTA communications prior to Disclosure Document distribution; (4) provide for CPOs to electronically distribute periodic account statements; (5) modernize signature requirements; and (6) remove duplicative solicitation and reporting requirements.

Timetable:

Action	Date
ANPRM	11/13/02 67 FR 68785
ANPRM Comment Period End	01/23/03 68 FR 2254
NPRM	03/17/03 68 FR 12622
NPRM Comment Period End	05/01/03
Final Action	07/00/03

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

CFTC

Proposed Rule Stage

Government Levels Affected: None
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Related RIN: Related To 3038-AB98

RIN: 3038-AB97

Commodity Futures Trading Commission (CFTC)

Final Rule Stage

3806. PERFORMANCE DISCLOSURES FOR COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6n; 7 USC 6o; 7 USC 12a

CFR Citation: 17 CFR 4.25; 17 CFR 4.35

Legal Deadline: None

Abstract: The Commodity Futures Trading Commission is proposing amendments to the requirements concerning the presentation of rate of return data by commodity trading advisors and commodity pool operators. The Commission's proposed rules address computational and disclosure matters relating to participating in commodity trading advisor programs on a partially funded basis.

Timetable:

Action	Date
ANPRM	06/18/98 63 FR 33297
ANPRM Comment Period End	09/16/98
NPRM	08/02/99 64 FR 41843
NPRM Comment Period End	10/01/99
NPRM	03/13/03 68 FR 12001
NPRM Comment Period End	04/14/03
Final Action	08/00/03

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038-AB39

3807. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2(a)(1)(A); 7 USC 6(b); 7 USC 6c

CFR Citation: 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10

Legal Deadline: None

Abstract: The Commission proposes to codify some of the interpretations and positions that its staff has taken regarding registration requirements under part 30 of the Commission's rules, which governs, generally, the solicitation and sale of foreign futures and foreign options contracts to customers located in the United States. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they fall generally into the following categories: (1) those that carry customer omnibus accounts for U.S. FCMs; (2) those that carry U.S. affiliate accounts that are proprietary to the foreign futures and options broker; and (3) those that carry U.S. accounts that are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

Timetable:

Action	Date
NPRM	08/26/99 64 FR 46613
NPRM Comment Period End	10/25/99
Final Action	07/00/03
Final Action Effective	09/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AB45

3808. CUSTOMER IDENTIFICATION PROGRAM FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-56, sec 326; 31 USC 5318(1)

CFR Citation: 31 CFR 103; 31 CFR 123; 17 CFR 1

Legal Deadline: NPRM, Statutory, October 25, 2002.

Abstract: The Department of the Treasury and the Commodity Futures Trading Commission are required to jointly prescribe regulations relating to customer identification programs for futures commission merchants and introducing brokers.

Timetable:

Action	Date
NPRM	07/23/02 67 FR 48328

CFTC

Final Rule Stage

Action	Date
Comment Period End	09/06/02
Final Action	05/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AB90

3809. ALLOCATION OF BUNCHED ORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

CFR Citation: 17 CFR 1.35

Legal Deadline: None

Abstract: The Commission intends to propose procedures for streamlining the allocation of bunched orders for futures and commodity option trades, as well as the associated recordkeeping requirements. The proposal was referred to in the Commission's intermediaries study, and it addresses concerns regarding the possibility of fraud and money-laundering activities.

Timetable:

Action	Date
NPRM	03/14/03 68 FR 12319

Action	Date
NPRM Comment Period End	04/28/03
Final Action	09/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AB93

Commodity Futures Trading Commission (CFTC)

Completed Actions

3810. DENOMINATION OF CUSTOMER FUNDS AND LOCATION OF DEPOSITORIES

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 1.32; 17 CFR 1.49

Completed:

Reason	Date
Final Action	02/04/03 68 FR 5545
Final Action Effective	03/06/03

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038-AB31

3811. REPORTING LEVELS FOR LARGE TRADER REPORTS; TRAKRS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 15.03

Completed:

Reason	Date
Final Action	10/21/02 67 FR 64522
Final Action Effective	11/20/02

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038-AB91

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