

## § 160.18

statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any person is greater than the protection provided under this part, as determined by the Bureau of Consumer Financial Protection, after consultation with the Commission, on its own motion or upon the petition of any interested party.

[66 FR 21252, Apr. 27, 2001, as amended at 76 FR 43879, July 22, 2011]

### § 160.18 Effective date; compliance date; transition rule.

(a) *Effective date.* This part is effective on June 21, 2001. In order to provide sufficient time for you to establish policies and systems to comply with the requirements for this part, the compliance date for this part is March 31, 2002.

(b)(1) *Notice requirement for consumers who are your customers on the effective date.* By March 31, 2002, you must have provided an initial notice, as required by §160.4, to consumers who are your customers on March 31, 2002.

(2) *Example.* You provide an initial notice to consumers who are your customers on March 31, 2002 if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *One-year grandfathering of service agreements.* Until March 31, 2003, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of §160.13(a)(1)(ii) even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the agreement on or before March 31, 2002.

[66 FR 21252, Apr. 27, 2001, as amended at 66 FR 24061, 24183, May 11, 2001; 67 FR 6790, Feb. 13, 2002]

### §§ 160.19–160.29 [Reserved]

### § 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity

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pool operator, introducing broker, major swap participant, and swap dealer subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information.

[76 FR 43879, July 22, 2011]

## PART 162—PROTECTION OF CONSUMER INFORMATION UNDER THE FAIR CREDIT REPORTING ACT

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AUTHORITY: Sec. 1088, Pub. L. 111–203; 124 Stat. 1376 (2010).

SOURCE: 76 FR 43884, July 22, 2011, unless otherwise noted.

### § 162.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement various provisions in the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* (“FCRA”), which provide certain protections to consumer information.

(b) *Scope.* This part applies to certain consumer information held by the entities listed below. This part shall apply to futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers,

major swap participants and swap dealers, regardless of whether they are required to register with the Commission. This part does not apply to foreign futures commission merchants, foreign retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers unless such entity registers with the Commission. Nothing in this part modifies limits or supersedes the requirements set forth in part 160 of this title.

(c) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a section illustrate only the issue described in the section and do not illustrate any other issue that may arise in this part.

#### § 162.2 Definitions.

(a) *Affiliate.* The term “affiliate” for the purposes of this part means any person that is related by common ownership or common corporate control with a covered affiliate.

(b) *Clear and conspicuous.* The term “clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information presented in the notice.

(c) *Common ownership or common corporate control.* The term “common ownership or common corporate control” for the purposes of this part means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of a company will be presumed not to control the company.

(d) *Company.* The term “company” means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Concise.*—

(1) *In general.* The term “concise” means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this part may be concise even if it is combined with other disclosures required or authorized by Federal or state law.

(f) *Consumer.* Except as otherwise provided, the term “consumer” means an individual person. The term consumer does not include market makers, floor brokers, locals, or individual persons whose information is not collected to determine eligibility for personal, family, or household purposes.

(g) *Consumer information.* The term “consumer information” means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report (as defined in section 603(d)(2) of the FCRA). Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(h) *Covered affiliate.* The term “covered affiliate” means a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant or swap dealer, which is subject to the jurisdiction of the Commission.

(i) *Dispose or Disposal.*—

(1) *In general.* The terms “dispose” or “disposal” means:

(i) The discarding or abandonment of consumer information; or

(ii) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

(2) *Sale, donation, or transfer of consumer information.* The sale, donation, or transfer of consumer information is not considered disposal for the purposes of subpart B.

(j) *Dodd-Frank Act.* The term “Dodd-Frank Act” means the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (2010)).

(k) *Eligibility information.* The term “eligibility information” means any information that would be a consumer

report if the exclusions from the definition of “consumer report” in section 603(d)(2)(A) of the FCRA did not apply. Examples of the type of information that would fall within the definition of eligibility information include an affiliate’s own transaction or experience information, such as information about a consumer’s account history with that affiliate, and other information, such as information from credit bureau reports or applications. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(l) *FCRA*. The term “FCRA” means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(m) *Financial product or service*. The term “financial product or service” means any product or service that a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant or swap dealer could offer that is subject to the Commission’s jurisdiction.

(n) *GLB Act*. The term “GLB Act” means the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338 (1999)).

(o) *Major swap participant*. The term “major swap participant” has the same meaning as in section 1a(33) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as may be further defined by this title, and includes any person registered as such thereunder.

(p) *Person*. The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(q) *Pre-existing business relationship*. The term “pre-existing business relationship” means a relationship between a person, or a person’s licensed agent, and a consumer based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation by this part;

(2) The purchase, rental, or lease by the consumer of a persons’ services or a financial transaction (including holding an active account or policy in force or having another continuing relationship) between the consumer and the

person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part; or

(3) An inquiry or application by the consumer regarding a financial product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part.

(r) *Solicitation*—(1) *In general*. The term “solicitation” means the marketing of a financial product or service initiated by an affiliate to a particular consumer that is—

(i) Based on eligibility information communicated to that covered affiliate by an affiliate that has or previously had the pre-existing business relationship with a consumer as described in this part; and

(ii) Intended to encourage the consumer to purchase or obtain such financial product or service. A solicitation does not include marketing communications that are directed at the general public.

(2) *Examples*. Examples of what communications constitute solicitations include communications such as a telemarketing solicitation, direct mail, or e-mail, when those communications are directed to a specific consumer based on eligibility information. A solicitation does not include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase financial products and services from the affiliate initiating the communications.

(s) *Swap dealer*. The term “swap dealer” has the same meaning as in section 1a(49) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as may be further defined by this title, and includes any person registered as such thereunder.

### Subpart A—Business Affiliate Marketing Rules

#### § 162.3 Affiliate marketing opt out and exceptions.

(a) *Initial notice and opt out*. A covered affiliate may not use eligibility information about a consumer that the

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covered affiliate receives from an affiliate with the consumer to make a solicitation for marketing purposes to such consumer unless—

(1) It is clearly and conspicuously disclosed to the consumer in writing or if the consumer agrees, electronically, in a concise notice that the person may use shared eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to such consumer;

(2) The consumer is provided a reasonable opportunity and a reasonable and simple method to opt out, or prohibit the covered affiliate from using eligibility information to make solicitations for marketing purposes to the consumer; and

(3) The consumer has not opted out.

(b) *Persons responsible for satisfying the notice requirement.* The notice required by this section must be provided:

(1) By an affiliate that has or previously had a pre-existing business relationship with a consumer; or

(2) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or previously had a pre-existing business relationship with the consumer.

(c) *Exceptions.* These proposed regulations would not apply to the following covered affiliate:

(1) A covered affiliate that has a pre-existing business relationship with a consumer;

(2) Communications between an employer and employee-consumer (or his or her beneficiary) in connection with an employee benefit plan;

(3) A covered affiliate that is currently providing services to the consumer;

(4) If the consumer initiated the communication with the covered affiliate by oral, electronic, or written means;

(5) If the consumer authorized or requested the covered affiliate's solicitation; or

(6) If compliance by a person with these regulations would prevent that person's compliance with state insurance laws pertaining to unfair discrimination.

(d) *Making solicitations.*

(1) *When a solicitation occurs.* A covered affiliate makes a solicitation for marketing purposes if the person—

(i) Receives eligibility information from an affiliate;

(ii) Uses that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation about the covered affiliate's financial products or services; or

(C) Decide which of the services or contracts to market to the consumer or tailor the solicitation to that consumer; and

(iii) As a result of the covered affiliate's use of the eligibility information, the consumer is provided a solicitation.

(2) *Receipt of eligibility information.* A covered affiliate may receive eligibility information from an affiliate in various ways, including when the affiliate places that information into a common database that the covered affiliate may access.

(3) *Service Providers.* Except as provided in paragraph (d)(5) of this section, a covered affiliate receives or uses an affiliate's eligibility information if a service provider acting on the covered affiliate's behalf (regardless of whether such service provider is a third party or an affiliate of the covered affiliate) receives or uses that information in the manner described in paragraph (d)(1)(i) or (d)(1)(ii) of this section. All relevant facts and circumstances will determine whether a service provider is acting on behalf of a covered affiliate when it receives or uses an affiliate's eligibility information in connection with marketing the covered affiliate's financial products or services.

(4) *Use by an affiliate of its own eligibility information.* Unless a covered affiliate uses eligibility information that the covered affiliate receives from an affiliate in the manner described in paragraph (d)(2) of this section, the covered affiliate does not make a solicitation subject to this subpart:

(i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or previously had with the

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consumer to market the covered affiliate's financial products or services to the consumer; or

(ii) Directs its service provider to use the affiliate's own eligibility information that it obtained in connection with a pre-existing business relationship it has or previously had with the consumer to market the covered affiliate's financial products or services to the consumer, and the covered affiliate does not communicate directly with the service provider regarding that use.

(5) *Use of eligibility information by a service provider.* (i) *In general.* A covered affiliate does not make a solicitation subject to this subpart if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that the covered affiliate may access) receives eligibility information from an affiliate that has or previously had a pre-existing business relationship with the consumer and uses that eligibility information to market the covered affiliate's financial products or services to the consumer, so long as—

(A) The affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market the covered affiliate's financial products or services);

(B) The affiliate establishes specific terms and conditions under which the service provider may access and use such affiliate's eligibility information to market the covered affiliate's financial products and services (or those of affiliates generally) to the consumer, such as the identity of the affiliated companies whose financial products or services may be marketed to the consumer by the service provider, the types of financial products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider's compliance with those terms and conditions;

(C) The affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses such affiliate's eligibility information in ac-

cordance with the terms and conditions established by such affiliate relating to the marketing of the covered affiliate's financial products or services;

(D) The affiliate is identified on or with the marketing materials provided to the consumer; and

(E) The covered affiliate does not directly use its affiliate's eligibility information in the manner described in paragraph (b)(1)(ii) of this section.

(ii) *Writing requirements.* (A) The requirements of paragraphs (b)(5)(i)(A) and (C) of this section must be set forth in a written agreement between the affiliate that has or previously had a pre-existing business relationship with the consumer and the service provider; and

(B) The specific terms and conditions established by the affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.

(e) *Relation to affiliate-sharing notice and opt out.* Nothing in this rulemaking will limit the responsibility of a covered affiliate to comply with the notice and opt-out provisions under other privacy rules under the FCRA, the GLB Act or the CEA.

### § 162.4 Scope and duration of opt out.

(a) *Scope of opt-out election—*(1) *In general.* The consumer's election to opt out prohibits any covered affiliate subject to the scope of the opt-out notice from using eligibility information received from another affiliate to make solicitations to the consumer.

(2) *Continuing relationship—*(i) *In general.* If the consumer establishes a continuing relationship with a covered affiliate or its affiliate, an opt-out notice may apply to eligibility information obtained in connection with—

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with a covered affiliate or its affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt out; or

(B) Any other transaction between the consumer and the covered affiliate or its affiliates as described in the notice.

(ii) *Examples of a continuing relationship.* A consumer has a continuing relationship with a covered affiliate or its affiliate if:

(A) The covered affiliate is a futures commission merchant through whom a consumer has opened an account, or that carries the consumer's account on a fully-disclosed basis, or that effects or engages in commodity interest transactions with or for a consumer, even if the covered affiliate does not hold any assets of the consumer;

(B) The covered affiliate is an introducing broker that solicits or accepts specific orders for trades;

(C) The covered affiliate is a commodity trading advisor with whom a consumer has a contract or subscription, either written or oral, regardless of whether the advice is standardized, or is based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of the particular consumer;

(D) The covered affiliate is a commodity pool operator, and accepts or receives from the consumer, funds, securities, or property for the purpose of purchasing an interest in a commodity pool;

(E) The covered affiliate is a major swap participant that holds securities or other assets as collateral for a loan made to the consumer, even if the covered affiliate did not make the loan or do not affect any transactions on behalf of the consumer; or

(F) The covered affiliate is a swap dealer that regularly effects or engages in swap transactions with or for a consumer even if the covered affiliate does not hold any assets of the consumer.

(3) *No continuing relationship*—(i) *In general.* If there is no continuing relationship between a consumer and the covered affiliate or its affiliate, and the covered affiliate or its affiliate obtain eligibility information about a consumer in connection with a transaction with the consumer, such as an isolated transaction or a credit application that is denied, an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

(ii) *Examples of no continuing relationship.* A consumer does not have a con-

tinuing relationship with a covered affiliate or its affiliate if:

(A) The covered affiliate has acted solely as a “finder” for a futures commission merchant, and the covered affiliate does not solicit or accept specific orders for trades; or

(B) The covered affiliate has solicited the consumer to participate in a pool or to direct his or her account and he or she has not provided the covered affiliate with funds to participate in a pool or entered into any agreement with the covered affiliate to direct his or her account.

(4) *Menu of alternatives.* A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or electing to prohibit solicitations by certain methods of delivery but not other methods of delivery. However, one of the alternatives must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

(5) *Special rule for a notice following termination of all continuing relationships.* A consumer must be given a new opt-out notice if, after all continuing relationships with the covered affiliate or its affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with the covered affiliate or its affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with paragraph b of this section, the consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out

notice applies to eligibility information obtained in connection with the terminated relationship.

(b) *Duration of opt-out election.* An opt-out election must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out election in writing or, if the consumer agrees, electronically. An opt-out election may be established for a period of more than five years or for an indefinite period unless revoked.

(c) *Time period in which a consumer can opt out.* A consumer may opt out at any time.

(d) *No effect on opt-out period.* An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt out.

**§ 162.5 Contents of opt-out notice; consolidated and equivalent notices.**

(a) *Contents of the opt-out notice—(1) In general.* An opt-out notice must be in writing, be clear and conspicuous, as well as concise, and must accurately disclose the following:

(i) (A) The name of the affiliate that has or previously had a pre-existing business relationship with a consumer, which is providing the notice; or

(B) If jointly provided jointly by multiple affiliates and each affiliate shares a common name, then the notice may indicate that it is being provided by multiple companies with the same name or multiple companies in the same group or family of companies. If the affiliates providing the notice do not share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates;

(ii) The list of affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer;

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) A statement that the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) A statement that the consumer's election will apply for the specified period of time and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who have previously elected to opt out, that such consumer does not need to act again until the consumer receives a renewal notice; and

(vii) A reasonable and simple method for the consumer to opt out.

(2) *Specifying length of time period.* If consumer is granted an opt-out period longer than a five-year duration, the opt-out notice must specify the length of the opt-out period.

(3) *No revised notice for extension of opt-out period.* The duration of an opt-out period may be increased for a period longer than the period specified in the opt-out notice without having to provide a revised notice of the increase to the consumer.

(b) *Joint relationships.* (1) If two or more consumers jointly obtain a financial product or service, a single opt-out notice may be provided to joint consumers.

(2) Any of the joint consumers may exercise the right to opt out on behalf of each joint consumer.

(3) The opt-out election notice must explain how an opt-out election by a joint consumer will be treated. That is, the notice should specify whether an opt-out election by a joint consumer will be treated as applying to all of the associated joint consumers, or as applying to each joint consumer separately.

(4) If the opt-out election notice provides that each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumer must be permitted to exercise his or her separate rights to opt out in a single response.

(5) A covered affiliate cannot require all joint consumers to opt out before implementing any opt-out election.

(c) *Alternative contents.* If the consumer is afforded a broader right to opt

out of receiving marketing than is required by this subpart, the requirements of this section may be satisfied by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

(d) *Coordinated and consolidated consumer notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law by the covered affiliate providing the notice, including but not limited to notices in the FCRA or the GLB Act privacy notices.

(e) *Equivalent notices.* A notice or disclosure that is equivalent to the notice required by this part in terms of content, and that is provided to a consumer together with a notice required by any other provision of law, satisfies the requirements of this section.

(f) *Model notices.* Model notices are provided in appendix A of this part. These notices were meant to facilitate compliance with this subpart; provided, however, that nothing herein shall be interpreted to require persons subject to this part to use the model notices.

#### § 162.6 Reasonable opportunity to opt out.

(a) *In general.* A covered affiliate must not use eligibility information about a consumer that the covered affiliate receives from an affiliate to make a solicitation to such consumer about the covered affiliate's financial products or services, unless the consumer is provided a reasonable opportunity to opt out, as required by this subpart.

(b) *Examples.* A reasonable opportunity to opt out under this subpart is:

(1) If the opt-out notice is mailed to the consumer, the consumer has 30 days from the date the notice is mailed to opt out.

(2) If the opt-out notice is sent *via* electronic means to the consumer, the consumer has 30 days from the date the consumer acknowledges receipt to elect to opt out by any reasonable method.

(3) If the opt-out notice is sent *via* e-mail (where the consumer has agreed to receive disclosures by e-mail), the consumer is given 30 days after the e-

mail is sent to elect to opt out by any reasonable method.

(4) If the opt-out notice provided to the consumer at the time of an electronic transaction, the consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction.

(5) If the opt-out notice is provided during an in-person transaction, the consumer is required to decide, as a necessary part of completing the transaction, whether to opt out through a simple process.

(6) If the opt-out notice is provided in conjunction with other privacy notices required by law, the consumer is allowed to exercise the opt-out election within a reasonable period of time and in the same manner as the opt out under that privacy notice.

#### § 162.7 Reasonable and simple methods of opting out.

(a) *In general.* A covered affiliate shall be prohibited from using eligibility information about a consumer received from an affiliate to make a solicitation to the consumer about the covered affiliate's financial products or services, unless the consumer is provided a reasonable and simple method to opt out, as required by this subpart.

(b) *Examples.* Reasonable and simple methods of opting out include:

(1) Designating a check-off box in a prominent position on an opt-out election form;

(2) Including a reply form and a self-addressed envelope (in a mailing);

(3) Providing an electronic means, if the consumer agrees, that can be electronically mailed or processed through an Internet Web site;

(4) Providing a toll-free telephone number; or

(5) Exercising an opt-out election through whatever means are acceptable under a consolidated privacy notice required under other laws.

(c) *Specific opt-out method.* Each consumer may be required to opt out through a specific method, as long as that method is acceptable under this subpart.

**§ 162.8 Acceptable delivery methods of opt-out notices.**

(a) *In general.* The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice.

(b) *Electronic notices.* For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions in §1.4 of this title or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

**§ 162.9 Renewal of opt out.**

(a) *Renewal notice and opt-out requirement.* (1) *In general.* Since the FCRA provides that opt-out elections can expire in a period of no less than five years, an affiliate that has or previously had a pre-existing business relationship with a consumer must provide a renewal notice to the consumer after such time in order to allow its affiliates to make solicitations. After the opt-out election period expires, its affiliates may make solicitations unless:

(i) The consumer has been given a renewal notice that complies with the requirements of this section and §§162.6 through 162.8 of this subpart, and a reasonable opportunity and a reasonable and simple method to renew the opt-out election, and the consumer does not renew the opt out; or

(ii) An exception in Sec. 162.3(c) of this subpart applies.

(2) *Renewal period.* Each opt-out renewal must be effective for a period of at least five years as provided in §162.4(b) of this subpart.

(3) *Affiliates who may provide the renewal notice.* The notice required by this paragraph must be provided:

(i) By the affiliate that provided the previous opt-out notice, or its successor; or

(ii) As part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

(b) *Contents of renewal or extension notice.* The contents of the renewal notice must include all of the same contents of the initial notices, but also must include:

(1) A statement that the consumer previously elected to limit the use of certain information to make solicitations to the consumer;

(2) A statement that the consumer may elect to renew the consumer's previous election; and

(3) If applicable, a statement that the consumer's election to renew will apply for a specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires.

(c) *Timing of renewal notice.* Renewal notices must be provided in a reasonable period of time before the expiration of the opt-out election period or any time after the expiration of the opt-out period, but before solicitations that would have been prohibited by the expired opt-out election are made to the consumer.

(d) *No effect on opt-out period.* An opt-out period may not be shortened by sending a renewal notice to the consumer before the expiration of the opt-out period, even if the consumer does not renew the opt-out election.

**§§ 162.10–162.20 [Reserved]**

**Subpart B—Disposal Rules**

**§ 162.21 Proper disposal of consumer information.**

(a) *In general.* Any covered affiliate must adopt reasonable, written policies and procedures that address administrative, technical, and physical safeguards for the protection of consumer information. These written policies and procedures must be reasonably designed to:

(1) Insure the security and confidentiality of consumer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of consumer information; and

(3) Protect against unauthorized access to or use of consumer information that could result in substantial harm or inconvenience to any consumer.

(b) *Standard.* Any covered affiliate under this part who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against

unauthorized access to or use of the information in connection with its disposal.

(c) *Examples.* The following examples are “reasonable” disposal measures for the purposes of this subpart—

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed;

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practically be read or reconstructed; and

(3) After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of consumer information in a manner that is consistent with this rule.

(d) *Relation to other laws.* Nothing in this section shall be construed:

(1) To require a person to maintain or destroy any record pertaining to a consumer that is imposed under Sec. 1.31 or any other provision of law; or

(2) To alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

#### APPENDIX A TO PART 162—SAMPLE CLAUSES

A. Although use of the model forms is not required, use of the model forms in this Appendix (as applicable) complies with the requirement in section 624 of the FCRA for clear, conspicuous, and concise notices.

B. Certain changes may be made to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Persons making such extensive revisions will lose the safe harbor that this Appendix provides. Acceptable changes include, for example:

1. Rearranging the order of the references to “your income”, “your account history”, and “your credit score”.

2. Substituting other types of information for “income”, “account history”, or “credit

score” for accuracy, such as “payment history”, “credit history”, or “claims history”.

3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as “the [ABC] group of companies,” including without limitation a statement that the entity providing the notice recently purchased the consumer’s account.

4. Substituting other types of affiliates covered by the notice for “commodity advisor”, “futures clearing merchant”, or “swap dealer” affiliates.

5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt-out period, the notice may omit information about the renewal notice.

6. Adding a statement informing consumers how much time they have to opt out before shared eligibility information may be used to make solicitations to them.

7. Adding a statement that the consumer may exercise the right to opt out at any time.

8. Adding the following statement, if accurate: “If you previously opted out, you do not need to do so again.”

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

- A-1 Model Form for Initial Opt-out notice (Single-Affiliate Notice)

- A-2 Model Form for Initial Opt-out notice (Joint Notice)

- A-3 Model Form for Renewal Notice (Single-Affiliate Notice)

- A-4 Model Form for Renewal Notice (Joint Notice)

- A-5 Model Form for Voluntary “No Marketing” Notice

#### A-1 MODEL FORM FOR INITIAL OPT-OUT NOTICE (SINGLE-AFFILIATE NOTICE)

[YOUR CHOICE TO LIMIT MARKETING]/  
[MARKETING OPT OUT]

—[Name of Affiliate] is providing this notice.

—[Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

—You may limit our affiliates in the [ABC] group of companies, such as our [commodity advisor, futures clearing merchant, and swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].

—Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from

when you tell us your choice)/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].

- [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from our affiliates, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

- By telephone: 1-877-###-####
- On the Web: www.-.com
- By mail: check the box and complete the form below, and send the form to:
- [Company name]
- [Company address]
- Do not allow your affiliates to use my personal information to market to me.

A-2 MODEL FORM FOR INITIAL OPT-OUT NOTICE (JOINT NOTICE)

[YOUR CHOICE TO LIMIT MARKETING]/  
[MARKETING OPT OUT]

- The [ABC group of companies] is providing this notice.
- [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]
- You may limit the [ABC companies], such as the [ABC commodity advisor, futures clearing merchant, and swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].
- Your choice to limit marketing offers from the [ABC] companies will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from the [ABC] companies for [another x years]/[at least another 5 years].
- [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

- By telephone: 1-877-###-####
- On the Web: www.-.com
- By mail: check the box and complete the form below, and send the form to:
- [Company name]
- [Company address]
- Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

A-3 MODEL FORM FOR RENEWAL NOTICE (SINGLE-AFFILIATE NOTICE)

[RENEWING YOUR CHOICE TO LIMIT MARKETING]/[RENEWING YOUR MARKETING OPT OUT]

- [Name of Affiliate] is providing this notice.
- [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]
- You previously chose to limit our affiliates in the [ABC] group of companies, such as our [commodity advisor, futures clearing merchant, and swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].
- Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

- By telephone: 1-877-###-####
- On the Web: www.-.com
- By mail: check the box and complete the form below, and send the form to:
- [Company name]
- [Company address]
- Renew my choice to limit marketing for [x] more years.

A-4 MODEL FORM FOR RENEWAL NOTICE (JOINT NOTICE)

[RENEWING YOUR CHOICE TO LIMIT MARKETING]/[RENEWING YOUR MARKETING OPT OUT]

- The [ABC group of companies] is providing this notice.
- [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]
- You previously chose to limit the [ABC companies], such as the [ABC commodity advisor, futures clearing merchant, and

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swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].

— Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

By telephone: 1-877-###-####

On the Web: www.-.com

By mail: check the box and complete the form below, and send the form to:

[Company name]

[Company address]

\_\_\_ Renew my choice to limit marketing for [x] more years.

### A-5 MODEL FORM FOR VOLUNTARY “NO MARKETING” NOTICE

[YOUR CHOICE TO STOP MARKETING]

— [Name of Affiliate] is providing this notice. You may choose to stop all marketing from us and our affiliates.

To stop all marketing offers, contact us [include all that apply]:

By telephone: 1-877-###-####

On the Web: www.-.com

By mail: check the box and complete the form below, and send the form to:

[Company name]

[Company address]

\_\_\_ Do not market to me.

## PART 165—WHISTLEBLOWER RULES

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### APPENDIX A TO PART 165—GUIDANCE WITH RESPECT TO THE PROTECTION OF WHISTLEBLOWERS AGAINST RETALIATION

AUTHORITY: 7 U.S.C. 2, 5, 12a(5) and 26, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (July 16, 2010).

SOURCE: 76 FR 53200, Aug. 25, 2011, unless otherwise noted.

### § 165.1 General.

Section 23 of the Commodity Exchange Act, entitled “Commodity Whistleblower Incentives and Protection,” requires the Commission to pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about violations of the Commodity Exchange Act. This part 165 describes the whistleblower program that the Commission intends to establish to implement the provisions of Section 23, and explains the procedures the whistleblower will need to follow in order to be eligible for an award. Whistleblowers should read these procedures carefully, because the failure to take certain required steps within the time frames described in this part may result in disqualification from receiving an award. Unless expressly provided for in this part, no person is authorized to make any offer or promise, or otherwise to bind the Commission with respect to the payment of any award or the amount thereof.

### § 165.2 Definitions.

As used in this part:

(a) *Action*. The term “action” generally means a single captioned judicial or administrative proceeding. Notwithstanding the foregoing:

(1) For purposes of making an award under § 165.7, the Commission will treat as a Commission action two or more administrative or judicial proceedings brought by the Commission if these