

public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or password, so long as access is available to the general public.

(w) *You* means:

- (1) Any futures commission merchant;
- (2) Any commodity trading advisor;
- (3) Any commodity pool operator; and
- (4) Any introducing broker subject to the jurisdiction of the Commission.

Subpart A—Privacy and Opt Out Notices

§ 160.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

- (1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and
- (2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 160.14 and 160.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

- (1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party other than as authorized by §§ 160.14 and 160.15; and
- (2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship—(1) General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:

- (i) Instructs you to execute a commodity interest transaction for the consumer;
- (ii) Opens a commodity interest account through an introducing broker

or with a futures commission merchant that clears transactions for its customers through you on a fully-disclosed basis;

(iii) Transmits specific orders for commodity interest transactions to you that you pass on to a futures commission merchant for execution, if you are an introducing broker;

(iv) Enters into an advisory contract or subscription with you, whether in writing or orally, and whether you provide standardized, or individually tailored commodity trading advice based on the customer's commodity interest or cash market positions or other circumstances or characteristics, if you are a commodity trading adviser; or

(v) Provides to you funds, securities, or property for an interest in a commodity pool, if you are a commodity pool operator.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

- (1) You may provide a revised privacy notice under § 160.8 that covers the customer's new financial product or service; or
- (2) If the initial, revised or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

- (i) Establishing the customer relationship is not at the customer's election;
- (ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time;
- (iii) A nonaffiliated financial institution establishes a customer relationship between you and a consumer without your prior knowledge; or

(iv) You have established a customer relationship with a customer in a bulk transfer in accordance with §1.65, if you are a transferee futures commission merchant or introducing broker.

(2) *Examples of exceptions*—(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if you acquire the customer's commodity interest account from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery of notice.* When you are required by this section to deliver an initial privacy notice, you must deliver it according to the provisions of §160.9. If you use a short-form initial notice for non-customers according to §160.6(d), you may deliver your privacy notice as provided in section §160.6(d)(3).

§160.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the life of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year fol-

lowing the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples.* Your customer becomes a former customer when:

(i) The individual's commodity interest account is closed;

(ii) The individual's advisory contract or subscription is terminated or expires; or

(iii) The individual has redeemed all of his or her units in your pool.

(c) *Delivery of notice.* When you are required by this section to deliver an annual privacy notice, you must deliver it in the manner provided by §160.9.

§160.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§160.4, 160.5 and 160.8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§160.14 and 160.15;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§160.14 and 160.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under §160.13 (and no other exception applies to that disclosure), a