

4. Investment Companies and Investment Advisers

Most investment company securities are sold through registered broker-dealers that are required by the Exchange Act to be members of the NASD and are subject to NASD rules. Separate rulemaking under the Investment Company Act of 1940 covering the telemarketing of investment company securities by NASD members would be largely duplicative of the NASD Rule and would not provide additional protections to consumers.

A small minority of investment companies are "self-distributed" (*i.e.*, the investment company sells its share to the public directly and not through a registered broker-dealer). The sale of these companies' securities are not covered by NASD rules. Under Exchange Act Rule 3a4-1, however, unsolicited telemarketing by self-distributed investment companies generally is prohibited.²⁵ Because telemarketing by self-distributed investment companies is already restricted by Rule 3a4-1, additional rulemaking appears unnecessary.

Investment advisers infrequently employ telemarketing to obtain advisory clients. Unlike the sale of a single security or other products and services, the service provided by an investment adviser typically involves an ongoing personal relationship that cannot easily be established over the telephone. Moreover, the Advisers Act and Commission rules thereunder provide procedural safeguards that have the effect of deterring abusive telemarketing by advisers. For example, Rule 204-3 generally requires a registered investment adviser to provide to a prospective client a written disclosure statement containing specified information concerning its personnel, investment strategies and methods, the services provided and the fees charged (1) At least 48 hours before entering into an investment advisory contract, or (2) At the time the contract is entered into, if the client has the right to terminate

²⁵ Rule 3a4-1 provides an exclusion from the definition of "broker" for certain persons associated with issuers of securities. Self-distributed investment companies operate without NASD membership pursuant to this rule. Rule 3a4-1(a)(4)(iii) prohibits "oral solicitations" of "potential purchasers." Investment company personnel may respond, however, "to inquiries of a potential purchaser in a communication initiated by the potential purchaser in a communication initiated by the potential purchaser" as long as the response is limited to information contained in the investment company's prospectus.

the contract without penalty within five business days.²⁶

Unsolicited telemarketing is not, however, prohibited by the Advisers Act or the rules thereunder. Although the Commission does not believe that specific rules are warranted at this time, it will monitor the implementation and effectiveness of the NASD Rule and consider whether similar rules are necessary to deter the development of abusive telemarketing practices by the investment advisory industry.

C. Conclusion

The Commission finds that the NASD Rule and MSRB Rule, together with the Exchange Act and the Advisers Act, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act, because the applicable provisions of such laws and rules are substantially similar to the FTC Rules,²⁷ except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions.²⁸ Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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²⁶ Rule 204-3 does not require a disclosure statement for a "contract for impersonal advisory services" involving a payment of less than \$200. Impersonal advisory services include (1) general information or recommendations not tailored for a specific client, and (2) statistical information that does not make a recommendation regarding a particular security. Neither the Division of Investment Management nor the Office of Compliance Inspections and Examinations is aware of any instances in which impersonal advisory services have been sold to consumers through unsolicited telemarketing.

²⁷ The Commission finds that such laws and rules provide protection from deceptive and other abusive telemarketing acts and practices by persons described in Section 3(d)(2) of the Telemarketing Act substantially similar to that provided by the FTC Rules. See Section 3(d)(1)(B)(i) of the Telemarketing Act, 15 U.S.C. 6102(d)(1)(B)(i) (1996).

²⁸ With respect to those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations, or activities inapplicable to securities transactions, the Commission finds that the promulgation of substantially similar rules is not necessary or appropriate in the public interest. See Section 3(d)(1)(B)(ii) of the Telemarketing Act, 15 U.S.C. 6102(d)(1)(B)(ii) (1996).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-97-20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 24, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule docket (AGC-200), Petition Docket No. 28890, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267-3939 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 11, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: 28890.

Petitioner: Frontier Flying Service, Inc.

Sections of the FAR Affected: 14 CFR 121.591 et seq.

Description of Relief Sought: To permit the petitioner to utilize ATP-certificated pilots to dispatch flights for a period of 60 days.

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 9, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512-0006.

Form Number: ATF F 3310.4.

Type of Review: Extension.

Title: Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

Description: This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 10,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

OMB Number: 1512-0019.

Form Number: ATF F 6A (5330.3C).

Type of Review: Extension.

Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

Description: This information collection is needed to verify importation of firearms, ammunition and implements of war. ATF Form 6A is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S. and aliens immigrating to the United States.

Respondents: Individuals or households.

Estimated Number of Respondents: 20,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

OMB Number: 1512-0030.

Form Number: ATF F 5300.11.

Type of Review: Extension.

Title: Annual Firearms Manufacturing and Exportation Report.

Description: ATF collects this data for the purpose of: ATF law enforcement witness qualifications; Congressional investigations in aid of legislation; disclosure to interested members in accordance with a court order; furnishing info to other Federal agencies; ATF inspections of manufacturers ensuring that the requirements of the National Firearms Act (NFA) are met.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,125 hours.

OMB Number: 1512-0038.

Form Number: ATF F 5030.6.

Type of Review: Extension.

Title: Authorization to Furnish Financial Information and Certificates of Compliance.

Description: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1512-0046.

Form Number: ATF F 27-G, ATF REC 5520/2.

Type of Review: Extension.

Title: Applications—Volatile Fruit-Flavor Concentrate Plants.

Description: Persons who wish to establish premises to manufacture, volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 10.

Estimated Burden Hours Per Recordkeepers: 3 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 30 hours.

OMB Number: 1512-0059.

Form Number: ATF F 5120.29.

Type of Review: Extension.

Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

Description: ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions to the labeling and manufacture. The form is also used to audit a product.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1512-0082.

Form Number: ATF F 1582-A (5120.24).

Type of Review: Extension.

Title: Drawback on Wines Exported.

Description: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S. they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.