

a private action for inducing or receiving a discrimination in price? *See, e.g., American Booksellers Ass'n v. Barnes & Noble*, 135 F. Supp. 2d 1031 (N.D. Calif. 2001); *but see United Magazine Co. v. Murdoch Magazines Distribution*, 2001 U.S. Dist. Lexis 20878 (S.D.N.Y. 2001).

(5) What benefits and costs have the Guides had on businesses that grant promotional allowances and services?

(6) What benefits and costs have the Guides had for businesses who receive promotional allowances and services?

(7) What benefits and costs have the Guides had for ultimate consumers?

(8) What changes, if any, should be made to the Guides to increase their benefits to those who use them and to consumers? Are there terms in the statute or concepts in the case law that are not presently addressed in the Guides, and that might benefit from clarification? How would these changes affect the costs that the Guides impose on firms that conform to them?

(9) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms that conform to them? How would these changes affect the benefits provided by the Guides?

(10) Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, what changes in the Guides, if any, would be appropriate?

(11) In addition to the issues mentioned in Question (3) above, since the Guides were last amended, what, if any, developments in technology or economic conditions require modification to the Guides? What modifications are required?

(12) What effects, if any, do the Guides have on the costs, profitability, competitiveness and employment of small business entities?

(13) Are there foreign or international laws, regulations, or standards concerning the avoidance of discriminatory allowances and services that the Commission should consider as it reviews the Guides? If so, what are they? (a) Should the Guides be changed to harmonize with these foreign or international laws, regulations, or standards? Why or why not? (b) How would harmonization affect the costs and benefits of the Guides for consumers? (c) How would harmonization affect the costs and benefits of the Guides for businesses, particularly small businesses?

(14) Are there any other problems occurring in the provision of promotional allowances and services covered by the Guides that are not dealt with in the Guides? If so, what

mechanisms should be explored to address such problems?

#### IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 29, 2013. Write "Fred Meyer Guides Review" on the comment.

Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comments do not include any sensitive personal information, such as a Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information.

In addition, do not include any "[t]rade secret or any commercial or financial information which is \* \* \* privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublish.commentworks.com/ftc/fredmeyerguides>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Fred Meyer Guides Review" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex B), 600 Pennsylvania Ave. NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 29, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

**Donald S. Clark**

Secretary.

[FR Doc. 2012-29189 Filed 12-3-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Chapter II

[Release Nos. 33-9370, 34-68309, 39-2487, IA-3506, IC-30282; File No. S7-12-12]

#### List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of list of rules scheduled for review.

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**SUMMARY:** The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are

scheduled for review by the agency and to invite public comment on them.

**DATES:** Comments should be submitted by January 3, 2013.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-12-12 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File No. S7-12-12. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

#### FOR FURTHER INFORMATION CONTACT:

Anne Sullivan, Office of the General Counsel, 202-551-5019.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600-611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded \* \* \* to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The list includes rules from 2001. When the Commission implemented the Act in 1980, it stated that it "intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission." Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

#### List of Rules To Be Reviewed

**Title:** Role of Independent Directors of Investment Companies.

**Citation:** 17 CFR 270.2a19-3; 17 CFR 270.10e-1; 17 CFR 270.32a-4.

**Authority:** 15 U.S.C. 80a-6(c), 80a-10(e), 80a-29(e), 80a-30, 80a-37(a).

**Description:** Rule 2a19-3 under the Investment Company Act ("Act") exempts an individual from being disqualified as an independent director of a registered investment company ("Fund") solely because he or she owns shares of an index fund that invests in the investment adviser or underwriter of the Fund, or their controlling persons. The exemption permits a director of a Fund to own shares of a registered investment company (including the Fund on which it serves) whose investment objective is to replicate the

performance of one or more broad-based securities indices.

Rule 10e-1 under the Act suspends temporarily the board composition requirements of the Act and rules thereunder, if a Fund fails to meet those requirements by reason of the death, disqualification, or bona fide resignation of a director. Rule 10e-1 suspends the board composition requirements for 90 days if the board can fill the director vacancy, or 150 days if a shareholder vote is required to fill the vacancy.

Rule 32a-4 under the Act exempts Funds from the Act's requirement that shareholders vote on the selection of the Fund's independent public accountant if the Fund (i) establishes an audit committee composed solely of independent directors that oversees the fund's accounting and auditing processes; (ii) adopts an audit committee charter setting forth the committee's structure, duties, powers, and methods of operation, or sets out similar provisions in the Fund's charter or bylaws; and (iii) maintains a copy of such audit committee charter.

**Prior Commission Determination Under 5 U.S.C. 604:** A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24816, which was approved by the Commission on January 2, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

**Title:** Rule 35d-1.

**Citation:** 17 CFR 270.35d-1.

**Authority:** 15 U.S.C. 80a-8, 80a-29, 80a-33, 80a-34, and 80a-37.

**Description:** Rule 35d-1 under the Act requires that an investment company with a name that suggests that the company focuses its investments in a particular type of investment (e.g., the ABC Stock Fund or XYZ Bond Fund), country or geographic region (e.g., The ABC Japan Fund or The XYZ Latin America Fund), or a particular industry (e.g., the ABC Utilities Fund or the XYZ Health Care Fund) invest at least 80% of its assets in the type of investment suggested by the name. Rule 35d-1 also addresses names that indicate that a Fund's distributions are exempt from income tax or that its shares are guaranteed or approved by the United States government.

**Prior Commission Determination Under 5 U.S.C. 604:** A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24828, which was approved by the Commission on January

17, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

*Title:* Integration of Abandoned Offerings.

*Citation:* 17 CFR 230.155, 17 CFR 230.429, 17 CFR 230.457, 17 CFR 230.477.

**Authority:** 15 U.S.C. 77b, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, and 15 U.S.C. 77z-3.

*Description:* Rule 155 provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. The rule amendments facilitate reliance on the public-to-private safe harbor by providing automatic effectiveness for any application to withdraw an entire registration statement before it becomes effective, permitting filing fees to be offset from withdrawn registration statements and providing other technical changes to the calculation of filing fees in order to reduce the financial risk of a registered offering that is withdrawn.

*Prior Commission Determination Under 5 U.S.C. 604:* A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with Release No. 33-7943, approved by the Commission on January 26, 2001, which adopted the rule and rule amendments. Comments on the proposing release were considered at that time. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

*Title:* Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers.

*Citation:* 17 CFR 240.17a-25.

**Authority:** 15 U.S.C. 78a *et seq.*

*Description:* Rule 17a-25 requires brokers and dealers to submit electronically to the Commission, upon request, information on customer and firm securities trading. Rule 17a-25 is designed to improve the Commission's capacity to analyze electronic submissions of transaction information, thereby facilitating Commission enforcement investigations and other trading reconstructions.

*Prior Commission Determination Under 5 U.S.C. 604:* A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of

Release No. 34-44494, which was issued by the Commission on June 29, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

*Title:* Rule 5b-3.

*Citation:* 17 CFR 270.5b-3.

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, unless otherwise noted.

*Description:* Rule 5b-3 under the Investment Company Act permits investment companies to treat a repurchase agreement as an acquisition of the underlying collateral, subject to certain conditions, in determining whether it is in compliance with the investment criteria for diversified funds set forth in section 5(b)(1) of the Act and the prohibition on fund acquisition of an interest in a broker-dealer in section 12(d)(3) of the Act. Rule 5b-3 also permits an investment company to treat the acquisition of a refunded security (which is a debt security whose principal and interest payments are to be paid by U.S. government securities that have been placed in an escrow account and are pledged only to the payment of the debt security) as an acquisition of the escrowed government securities, subject to certain conditions, for purposes of the diversification requirements of section 5(b)(1) of the Act.

*Prior Commission Determination Under 5 U.S.C. 604:* A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of rule 5b-3 in Release No. IC-25058, which was approved by the Commission on July 5, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analyses were considered at that time.

*Title:* Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of Certain National Securities Exchanges and Limited Purpose National Securities Associations.

*Citation:* 17 CFR 240.6a-2, 17 CFR 240.6a-3, 17 CFR 240.6a-4, 17 CFR 240.19b-4, 17 CFR 240.19b-7, 17 CFR 249.10, 17 CFR 249.819; 17 CFR 249.822.

**Authority:** 15 U.S.C. 78a *et seq.*

*Description:* The Commission adopted Rule 6a-4 under the Exchange Act and registration Form 1-N prescribing the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges pursuant

to Section 6(g)(1) of the Exchange Act to trade security futures products. The Commission also adopted conforming amendments to Rules 6a-2 and 6a-3 under the Exchange Act and Rule 202.3 of the Commission's procedural rules. In addition, the Commission adopted Rule 19b-7, Form 19b-7, and amendments to Rule 19b-4 and Form 19b-4 to accommodate proposed rule changes submitted by national securities exchanges registered pursuant to Section 6(g) of the Exchange Act and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act. These rules and forms, and amendments to existing rules and forms, were necessary to implement the Commodity Futures Modernization Act of 2000.

*Prior Commission Determination Under 5 U.S.C. 605:* Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the adopted rules, forms, and conforming amendments would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, was attached to Proposing Release No. 34-44279 (May 8, 2001) as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

*Title:* Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934.

*Citation:* 17 CFR 240.15a-10, 17 CFR 240.15b2-2, 17 CFR 15b11-1, 17 CFR Part 248, 17 CFR Part 249.

**Authority:** 15 U.S.C. 78a *et seq.*; 15 U.S.C. 6801 *et seq.*

*Description:* The Commission adopted the following rules to implement provisions of the Commodity Futures Modernization Act of 2000 ("CFMA"). First, the Commission amended its broker-dealer registration requirements and adopted a new form to implement Section 203 of the CFMA to allow futures commission merchants and introducing brokers registered with the CFTC to register as broker-dealers by filing a notice with the Commission for the limited purpose of effecting transactions in security futures products. Second, the Commission adopted an exemption from registration under Section 15(a) of the Exchange Act to permit, subject to certain conditions, a broker-dealer registered by notice to trade security futures products regardless of the market on which the product was listed or traded. Third, the Commission adopted amendments to Regulation S-P to revise certain

provisions of Regulation S-P in light of Section 124 of the CFMA, which made the privacy provisions of the Gramm-Leach-Bliley Act applicable to activity regulated by the CFTC. These amendments also permitted futures commission merchants and introducing brokers registered by notice as broker-dealers to comply with Regulation S-P by complying with the CFTC's financial privacy rules.

**Prior Commission Determination Under 5 U.S.C. 605:** Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the proposed rules, forms, and conforming amendments would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, was attached to Proposing Release No. 34-44455 (June 20, 2001) as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

**Title:** Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index.

**Citation:** 17 CFR 240.3a55-1, 17 CFR 240.3a55-2, 17 CFR 240.3a55-3.

**Authority:** 15 U.S.C. 78a *et seq.*

**Description:** The CFTC and the SEC (collectively, "Commissions") adopted joint final rules to implement new statutory provisions enacted by the Commodity Futures Modernization Act of 2000. Specifically, the CFMA directed the Commissions to jointly specify by rule or regulation the method to be used to determine "market capitalization" and "dollar value of average daily trading volume" for purposes of the new definition of "narrow-based security index," including exclusions from that definition, in the Commodity Exchange Act and the Exchange Act. The CFMA also directed the Commissions to jointly adopt rules or regulations that set forth the requirements for an index underlying a contract of sale for future delivery traded on or subject to the rules of a foreign board of trade to be excluded from the definition of "narrow-based security index."

**Prior Commission Determination Under 5 U.S.C. 605:** Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the rules would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 34-44288 (May 9, 2001) as an Appendix. The

Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

**Title:** Options Disclosure Document.

**Citation:** 17 CFR 230.135b.

**Authority:** 15 U.S.C. 77b, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77s, and 15 U.S.C. 77z-3.

**Description:** This rule clarifies that an options disclosure document prepared in accordance with Commission rules under the Securities Exchange Act of 1934 is not a prospectus and is not subject to civil liability under Section 12(a)(2) of the Securities Act. This amendment reduces legal uncertainty regarding whether such liability applies to these documents by codifying a long-standing interpretive position taken by the Division of Corporation Finance.

**Prior Commission Determination Under 5 U.S.C. 605:** Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission certified at the proposal stage on July 1, 1998 in Release No. 33-7550 that the rule revisions would not have a significant economic impact on a substantial number of small entities. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

Dated: November 28, 2012.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012-29149 Filed 12-3-12; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 150

[Docket No. FDA-1997-P-0007] (formerly Docket No. 1997P-0142)

#### Artificially Sweetened Fruit Jelly and Artificially Sweetened Fruit Preserves and Jams; Proposed Revocation of Standards of Identity

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is proposing to revoke the standards of identity for artificially sweetened jelly, preserves, and jams. We are taking this action primarily in response to a citizen petition submitted by the International

Jelly and Preserve Association (IJPA). We are taking this action because we tentatively conclude that these standards are both obsolete and unnecessary in light of our regulations for foods named by use of a nutrient content claim and a standardized term. We also tentatively conclude that this action will promote honesty and fair dealing in the interest of consumers.

**DATES:** Submit electronic or written comments on the proposed rule by March 4, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA-1997-P-0007 (formerly Docket No. 1997P-0142), by any of the following methods.

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301-827-6870.
- *Mail/Hand delivery/Courier (for paper or CD-ROM submissions):* Division of Dockets Management, (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the Agency name and Docket No. FDA-1997-P-0007 (formerly Docket No. 1997P-0142) for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket numbers found in brackets in the heading of this document into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. **P**FOR FURTHER INFORMATION CONTACT:

**FOR FURTHER INFORMATION CONTACT:** Daniel Reese, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-2371.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

For more than 50 years, FDA has maintained standards of identity for