

Commodity Futures Trading Commission

§ 160.16

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

§ 160.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to notice and opt out requirements.* The requirements for initial notice in § 160.4(a)(2), for the opt out in §§ 160.7 and 160.10, and for initial notice in § 160.13 in connection with service providers and joint marketing do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security or your records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, to law enforce-

ment agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*; or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated mortgage lender of the value of the assets in the customer's account so that the lender can evaluate the consumer's application for a mortgage loan.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 160.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 160.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit or supersede

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the operation of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 160.17 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering or affecting any statute, regulation, order or interpretation in effect in any state, except to the extent that such state statute, regulation, order or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state 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 consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the Commission, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 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, commodity trading advisor, commodity pool operator and introducing broker 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. These policies and procedures must be reasonably designed to:

(a) Insure the security and confidentiality of customer records and information;

(b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

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

APPENDIX TO PART 160—SAMPLE CLAUSES

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to non-affiliated third parties.