



COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038-AD99, RIN 3038-AE31, RIN 3038-AE32, RIN 3038-AE60, RIN3038-AE94

Extension of Currently Open Comment Periods for Rulemakings in Response to the COVID-19 Pandemic

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of currently open comment periods for rulemakings.

SUMMARY: The coronavirus disease 2019 (“COVID-19”) pandemic may present challenges to the ability of market participants and other members of the public to submit timely comments on the Commission’s proposed rulemakings. Accordingly, the Commission is extending the comment period for the rulemakings listed herein until the dates specified herein in order to provide market participants and other members of the public an additional period of time to comment on the proposed rulemakings.

DATES: For those rulemakings listed in SUPPLEMENTARY INFORMATION for which the comment period is being extended, comments must be received on or before the dates specified herein.

ADDRESSES: You may submit comments by any of the following methods:

- CFTC website: *comments.cftc.gov*. Follow the instructions for submitting comments through the Comments Online process on the website.
- Mail: Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- Hand Delivery/Courier: Same as Mail, above.

Please submit your comments using only one method.

To ensure that your comments are considered to the fullest extent possible by the Commission, you should identify each of the proposed rulemakings to which your comment applies by providing the name and RIN number associated with each rulemaking.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: On this release, Laura B. Badian, Assistant General Counsel, (202) 418-5969, lbadian@cftc.gov; Mark T. Fajfar, Assistant

¹ 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

General Counsel, (202) 418-6636, mfajfar@cftc.gov, in each case at the Office of the General Counsel, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. On any particular rulemaking, the Commission staff members listed in the associated notice of proposed rulemaking.

SUPPLEMENTARY INFORMATION:

Extension of Open Comment Periods on Rulemakings and Request for Comment

In response to the COVID-19 pandemic, the Commission has worked closely with the industry to identify relief or other assistance that may be needed to help ensure the industry can support orderly and liquid markets in the face of the coronavirus. These efforts include staff no-action relief letters that offer market participants temporary, tailored relief to mitigate market disruptions.²

The Commission, at its discretion, has traditionally considered comments submitted after a comment period closes but before adoption of a final rule or order. Nevertheless, in recognition of the challenges that market participants and other interested members of the public may face in commenting on proposed rulemakings as a result of the COVID-19 pandemic, the Commission is formally extending the comment period for the rulemakings listed herein until the dates specified herein.

The Commission is continuing to monitor the impact of the COVID-19 pandemic on derivatives markets and their participants and may consider additional comment period extensions and other relief as appropriate.

The comment periods for the following proposed rulemakings are being extended

² See, e.g., CFTC Letter No. 20-11 (Mar. 20, 2020) (granting temporary relief for commodity pool operators) and CFTC Letter No. 20-12 (Mar. 31, 2020) (granting temporary relief for foreign brokers exempt pursuant to Commission Regulation 30.5 to handle U.S. futures market orders). All CFTC staff relief granted in response to COVID-19 is available at <https://www.cftc.gov/coronavirus>.

until the date specified below:

Title of Rulemaking	Date Proposed	Original Closing Date for Comments	Extended Closing Date for Comments
Position Limits for Derivatives	1/30/2020	4/29/2020	Friday, 5/15/2020
Swap Execution Facility Requirements and Real-Time Reporting Requirements	1/30/2020	4/20/2020	Friday, 5/22/2020
Certain Swap Data Repository and Data Reporting Requirements	5/13/2019	5/20/2020 (previously extended from 7/29/2019)	Friday, 5/22/2020
Amendments to the Real-Time Public Reporting Requirements	2/20/2020	5/20/2020	Friday, 5/22/2020
Amendments to the Swap Data Recordkeeping and Reporting Requirements	2/20/2020	5/20/2020	Friday, 5/22/2020

Issued in Washington, DC on April 13, 2020, by the Commission.

Robert Sidman

Deputy Secretary of the Commission.

Appendices to Extension of Currently Open Comment Periods for Rulemakings in Response to the COVID-19 Pandemic—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz and Stump voted in the affirmative. Commissioners Behnam and Berkovitz voted in the negative.

Appendix 2—Dissenting Statement of Commissioner Rostin Behnam

I strongly support extending all current open comment periods on rule proposals, which will allow commenters to solely focus their efforts on the immediate personal and professional needs of the day, and ensure – after we collectively get through these uncertain times – that commenters are able to provide the CFTC with the most fulsome comments to these important policy proposals. Unfortunately, today’s Commission action does not extend current open comment periods in any meaningful way, and thus I respectfully must dissent.

Five open comment periods are extended by today’s action. However, the comment periods for three of the five rules are extended for a mere two days. That is not an extension at all. Instead, it is essentially an announcement that the Commission will not be extending these deadlines. For two of these rules, the comment period opened on February 20, so the entire comment period has essentially spanned the COVID-19 pandemic. Market participants deserve an opportunity to comment outside of current market conditions, and better rules would result. Importantly, the COVID-19 pandemic itself may impact views on the proposed rules, and the CFTC should adjust comment periods to allow for consideration of these evolving impacts.

Similarly, today’s action extends the comment period for position limits by a mere sixteen days. Prior position limits proposals have garnered hundreds of public comments totaling thousands of pages. Producing these comments presumably takes months of work and careful thought by market participants and other stakeholders.

Extending the deadline to May 15 as market and public health uncertainty continues is not sufficient.

I commend agency Division Directors and staff, who are themselves adjusting in real-time to the new realities of social distancing and teleworking, for issuing no-action relief aimed at providing market participants and registrants with necessary relief.¹ These important actions have enabled market participants and registrants to focus their efforts on business continuity, market stability, and personnel management in these turbulent times. I also applaud the CFTC's recent actions to issue Customer Advisories notifying the public to be on high alert for fraudsters that are seeking to profit from recent market volatility related to COVID-19.²

I previously stated that the CFTC should temporarily table all non-critical policy work, shifting all our efforts and resources towards monitoring market and institutional stability and resiliency, prioritizing surveillance and enforcement, working with other regulators, and exhaustively engaging with market participants to consider necessary agency action that will alleviate market disruptions and support stable financial markets.³

Although markets continue to show signs of normalcy and stability since the most volatile days of the last two months, there remains significant uncertainty and a steep

¹ CFTC Provides Relief to Market Participants in Response to COVID-19 (March 17, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8132-20>; CFTC Issues Second Wave of Relief to Market Participants in Response to COVID-19 (March 17, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8133-20>; CFTC Issues Third Wave of Relief to Market Participants in Response to COVID-19 (March 20, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8136-20>; CFTC Provides Further Relief to Market Participants in Response to COVID-19 (March 31, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8142-20>.

² CFTC Issue Customer Advisory on COVID-19 (March 18, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8134-20>; CFTC Issues Customer Advisory on Fee Scams (April 6, 2020)

³ Statement of Commissioner Rostin Behnam Regarding COVID-19 and CFTC Digital Assets Rulemaking (March 24, 2020). <https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement032420>.

road ahead. Consequently, I believe comment periods should be of sufficient length to allow market participants to focus on the current crisis, which the public and country continue to endure. I stand ready to work with the Chairman, my fellow Commissioners, and market participants to reach agreement on meaningful extensions.

Appendix 3—Dissenting Statement of Commissioner Dan M. Berkovitz

I dissent from today’s extensions of comment periods for several pending proposed rulemakings because the extensions are *too short*. Market participants and the public need more time to be able to provide high-quality comments on pending CFTC rulemakings in light of the disruptions resulting from the novel coronavirus pandemic.

Public comments serve a critical role in the Commission’s rulemaking deliberative process on regulations that will impact market participants and safeguard derivatives markets for years to come. Not providing the public sufficient time to obtain additional perspective and develop meaningful comments in these extraordinary times is bad public policy.

The Commission should afford market participants and interested members of the public comment periods substantially longer than the standard periods that apply absent these extraordinary circumstances. At a minimum, the Commission should extend all pending comment periods by 60 days. The two-week and two-day extensions granted by the Commission today are inadequate.

The pandemic has disrupted—and destroyed—life across the country. To date, the coronavirus has killed more than 12,800 Americans.¹ The projected toll is expected

¹ Worldometer, Coronavirus Cases, as of April 8, 2020, available at <https://www.worldometers.info/coronavirus/country/us/>.

to be much larger.² Nearly 300 million Americans (over 90 percent of the population) are under stay-at-home orders.³ Nearly 10 million workers have filed jobless claims during the past two weeks.⁴ Schools are closed. Non-essential travel is forbidden. By no means can the current circumstances be described as—or treated as—business-as-usual.

So far, the financial markets have been resilient and have performed their intended functions of price discovery and risk management. Our market infrastructures—exchanges, clearinghouses, and swap execution facilities—have met the challenges posed by record volatility and volumes. Market participants have continued to provide essential risk management tools to American companies to help them maintain operations through this time of national crisis.

I commend the work done by the CFTC staff in monitoring these markets and for taking appropriate action to ensure market participants can continue to access the markets while observing social distancing requirements. I also commend the Chairman and the agency's executive leadership team for enabling all of us at the CFTC to telework and carry out the mission of the agency from safe locations in accordance with state and federal requirements and guidelines.

The COVID-19 related regulatory relief granted by the CFTC over the past few weeks is clear recognition that the pandemic has disrupted normal operations of market participants. Many functions cannot be performed in a timely manner due to physical displacements and other extraordinary demands on market participants. Just three weeks

² See generally <http://www.healthdata.org/>.

³ Philip Bump, *Nearly all Americans are under stay-at-home orders. Some may have come too late.*, Washington Post, Mar. 2, 2020, available at <https://www.washingtonpost.com/politics/2020/04/02/nearly-all-americans-are-under-stay-at-home-orders-some-may-have-come-too-late/>.

⁴ Rebecca Rainey and Norman McCaskill, *'No words for this': 10 million workers file jobless claims in just two weeks*, Politico, Apr. 2, 2020, available at <https://www.politico.com/news/2020/04/02/unemployment-claims-coronavirus-pandemic-161081>.

ago, on March 17, 2020, in CFTC Letter No. 20-02, CFTC staff observed, “[d]isruptions in transportation and limited access to facilities and support staff as a result of the COVID-19 pandemic could hamper efforts of market participants to meet their regulatory obligations.” The staff noted that no-action relief has been requested “where compliance is anticipated to be particularly challenging or impossible because of displacement of firm personnel from their normal business sites due to [social distancing] and closures”⁵ Subsequent staff no-action relief letters similarly recognized the difficulties that market participants face in complying with CFTC requirements and requests.

To accommodate these extraordinary circumstances, the CFTC has granted relief from a variety of CFTC recordkeeping, reporting, and registration requirements. Specifically, the CFTC has granted relief from requirements to: time-stamp records;⁶ record oral conversations;⁷ furnish Chief Compliance Officer Annual Reports to the Commission prior to September 1, 2020;⁸ register as an Introducing Broker (IB);⁹ submit annual compliance reports and fourth quarter financial reports prior to September 1, 2020;¹⁰ comply with audit trail requirements;¹¹ file Form CPO-PQR pursuant to regulation 4.27;¹² submit commodity pool annual reports due on or before April 30,

⁵ CFTC Letter No. 20-02.

⁶ *Id.* (members of Designated Contract Markets (DCMs) and swap execution facilities (SEFs)); CFTC Letter No. 20-03 (futures commission merchants and IBs); CFTC Letter No. 20-04 (Floor Brokers); CFTC Letter No. 20-05 (Retail Foreign Exchange Dealers); CFTC Letter No. 20-06 (swap dealers).

⁷ CFTC Letter No. 20-03; CFTC Letter No. 20-04; CFTC Letter No. 20-05; CFTC Letter No. 20-06; CFTC Letter No. 20-07 (SEFs).

⁸ CFTC Letter No. 20-03; CFTC Letter No. 20-06.

⁹ CFTC Letter No. 20-04.

¹⁰ CFTC Letter No. 20-08 (SEFs).

¹¹ CFTC Letter No. 20-09 (DCMs, to the extent noncompliance is caused by displacement resulting from the COVID-19 pandemic response).

¹² CFTC Letter No. 20-11 (relief permits Small or Mid-Sized CPOs to file the required annual reports, and Large CPOs to file quarterly reports for the first quarter 2020, up to 45 days later than required by regulation).

2020;¹³ distribute periodic account statements to pool participants due on or before April 30, 2020;¹⁴ register as an IB (for foreign brokers acting under specified circumstances);¹⁵ and register as a Major Swap Participant prior to September 30, 2020.¹⁶

The Commission's refusal to grant meaningful rulemaking comment period extensions stands in contrast to its swift recognition of requests by market participants for relief from the Commission's reporting and registration regulations. It is not clear why the Commission believes that market participants who state that it is difficult to comply with fundamental reporting or registration requirements nonetheless will be able to evaluate proposed rules and prepare comments with minimal delay.

Today's extension of two weeks for the position limits rulemaking—a rule that has been a decade in the making—is insignificant given the scope and magnitude of the proposed changes to the existing position limits rules. Further, the commodity markets have experienced unprecedented price movements and stresses over the past several weeks and commenters and the Commission would be well-served to review and take into account how the markets performed in this environment in fashioning and considering public comments. There is no compelling reason to require public comments on a position limits rule that has been ten years in the making without fully considering how the market has performed in the recent conditions of extreme stress.

The two extensions of two days for the swap reporting rulemakings are not meaningful. In fact, they are almost disrespectful to the many industry professionals that are attempting to meet the Commission's comment deadlines under unprecedented

¹³ *Id.*

¹⁴ *Id.*

¹⁵ CFTC Letter No. 20-12.

¹⁶ CFTC Letter No. 20-10.

circumstances. Typically, comment periods are measured in days. These extensions can be measured in hours. I doubt any market participant will find these extensions of any benefit.

It is unreasonable to require market participants to prepare comments on complex rulemakings at the same time they are struggling to comply with fundamental recordkeeping, reporting, and registration obligations. The Commission should extend these comments periods by at least 60 days.

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