

Act and to customer funds that are held as secured amounts under Rule 30.7.²³

FIA strongly endorsed the Commission's proposal to amend Rules 1.10(g), 145.5(d) and (h), and 147.3(b) to provide that certain financial information filed with the Commission is exempt from disclosure pursuant to FOIA Exemption 8. The Commission received no comments opposing adoption of these proposed amendments. After considering the proposed amendments and the responses by commenters, the Commission has decided to amend Rules 1.10(g), 145.5(d) and (h), and 147.3(b) as proposed.

IV. Amendments To Reduce Capital Charges for Foreign Currency Forwards and Inventory in Specified Currencies

The Commission has also amended Commission Rule 1.17(c)(5)(ii), pursuant to which an FCM or IB, in computing its adjusted net capital, must deduct from its net capital specified percentages of the market value of its inventory, fixed price commitments and forward contracts. In general, the required deduction from market value for a forward contract that is not "covered", as defined in Rule 1.17(j), is twenty percent. The Commission has amended the rule by adding a provision that would specify a capital charge of six percent for uncovered inventory and forward contracts in euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs. Uncovered forward contracts and cash deposits in any other non-U.S. currency would remain subject to the capital charge of twenty percent currently set forth in the rule. As noted by the Commission when it proposed amending Rule 1.17 to reduce the charge for specified currencies to 6 percent, the lower charge is consistent with the reduced currency risk of these foreign currencies, given their stability relative to the U.S. dollar. As discussed in the October 11 release, the reduced charge is also consistent with similar capital charges that BDs are required to deduct from their net capital under SEC regulations.²⁴ Furthermore, the amendment provides greater clarity and

transparency to the Commission's capital rule, as currently the lower capital charge for the specified major non-U.S. currencies is set forth only in the Commission's Form 1-FR Instructions Manual.²⁵

FIA and the NFA generally supported this amendment, and no commenters expressed any objections to the amendment. In its comment letter, NFA advocated that the Commission undertake additional revision of Commission Regulation 1.17, to address the Commission's required deductions from capital in relation to the activities of retail foreign exchange (FOREX) dealers that are registered as FCMs. As noted in the NFA's letter, Division staff is already in the process of reviewing several of the issues listed in the letter, as part of separate guidance and/or future rulemaking related to FOREX.

V. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act ("APA") provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, unless the agency is permitted to implement an earlier effective date under one of the exceptions recognized by the APA.²⁶ The exceptions set forth in the APA are as follows: (1) A substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.²⁷

The amendments being made to Rule 1.17 "grant or recognize an exemption or relieve a restriction" that harmonizes unnecessarily conflicting capital deductions that would otherwise be required for FCMs that have received SEC approval to use the Alternative Capital Computation. The Commission is also adopting other amendments that permit FCMs to file their Part II CSE FOCUS reports in lieu of their required Form 1-FR, which also contributes to the exemption or relief made available by amended Rule 1.17(c)(6).²⁸ Accordingly, the Commission has determined to make these amendments

effective immediately upon publication in the **Federal Register**.

Furthermore, the Commission has previously found "good cause" for making FOIA and Sunshine Act amendments effective immediately with the adoption of new financial filing requirements for FCMs, in particular where the new filings are required prior to the expiration of 30 days from the publication in the rule.²⁹ In this case, the no-action relief granted to firms prior to the adoption of the amendments of Rule 1.17(c)(6) will be superceded immediately upon the effective date of the amended rules in the attached release, and the firms will be required to comply with the reporting requirements mandated by the amended rules. In addition, other firms may receive SEC approval to use alternative capital charges prior to the expiration of 30 days from the publication of this rule, and would therefore seek to file with the Commission such notices and statements as are required by the amended rule. Accordingly, the Commission has determined to make the amendments to Rules 145 and 147 adopted in this final rulemaking effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et. seq.*, requires that agencies, when amending their rules, consider the impact of those amendments on small businesses. The Commission invited the public to comment on the Chairman's certification that these rules would not have a significant economic impact on a substantial number of small entities.³⁰ The Commission received no comments on the certification.

C. Paperwork Reduction Act

This rulemaking includes information collection requirements. As required by the Paperwork Reduction Act of 1995 ("PRA"),³¹ the Commission submitted a copy of the proposed rule amendments to the Office of Management and Budget ("OMB") for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with regulation.³²

²³ Rule 1.10(g) currently provides, and will continue to provide, that all information on Forms 1-FR and FOCUS reports that is nonpublic will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Rule 1.10(g) also specifies the rule does not limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

²⁴ See 70 FR 58993.

²⁵ An electronic copy of the "Instructions for Form 1-FR-FCM" is available to the public on the Commission's Web site, at <http://www.cftc.gov/files/tm/tminstructionsmanualfinalseptember2004.pdf>.

²⁶ 5 U.S.C. 553(b) and (d).

²⁷ 5 U.S.C. 553 (d).

²⁸ As noted earlier, the amendments related to filing the Part II CSE version of the FOCUS report affect Rules 1.10, 1.18, and 1.52.

²⁹ The Commission's prior determination that there was "good cause" for making amendments to parts 145 and 147 effective immediately appears in 44 FR 13435 (March 27, 1979) (Adoption of Changes to Form 1-FR and Freedom of Information and Sunshine Act Rules).

³⁰ 70 FR at 58994.

³¹ 44 U.S.C. 3507(d).

³² 70 FR at 58994.