### Airway segment Changeover points

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**I. Introduction**

**A. Background**

On July 21, 2010, President Obama signed the Dodd-Frank Act. Section 731 of the Dodd-Frank Act amended the Commodity Exchange Act (CEA) by adding Section 4s, which, among other things, prohibits any person from acting as a "swap dealer" or "major swap participant" unless the person is registered with the Commission. To effectuate the Congressional directive that an SD or MSP apply for registration in such form and manner as prescribed by the Commission, on November 23, 2010, the Commission proposed regulations to establish a registration process for SDs and MSPs (Proposed Registration Regulations), and on January 19, 2012, the Commission adopted regulations that establish a registration process for SDs and MSPs (Final Registration Regulations). Although APs of other Commission registrants are generally required to register with the Commission, APs of SDs and MSPs are not required to register as such. However, an SD or MSP is prohibited from permitting any

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**COMMODITY FUTURES TRADING COMMISSION**

17 CFR Parts 3 and 23
RIN 3038–AD66

Dual and Multiple Associations of Persons Associated With Swap Dealers, Major Swap Participants and Other Commission Registrants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations to make clear that each swap dealer (SD), major swap participant (MSP), and other Commission registrant with whom an associated person (AP) is associated is required to supervise the AP and is jointly and severally responsible for the activities of the AP with respect to customers common to it and any other SD, MSP or other Commission registrant.

**DATES:** Effective June 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** Israel J. Goodman, Special Counsel, or Barbara S. Gold, Associate Director, Division of Swap Dealer and Intermediary Oversight, 1155 21st Street NW, Washington, DC 20581. Telephone number: 202–418–6700 and electronic mail: igoodman@cftc.gov or bgold@cftc.gov.

**SUPPLEMENTARY INFORMATION:**
person associated with it to effect or be involved in effecting swaps on its behalf if such person is subject to a statutory disqualification. 10

B. The Proposed Regulations

The Commission adopted the Final Registration Regulations after considering the comments it received from the public on the Proposed Registration Regulations. One commenter recommended that the Commission expand the scope of the provisions offending multiple associations in Regulation 3.12(f), or adopt a new regulation, “to address the situations in which an individual conducts swaps-related activity on behalf of more than one Swap Entity [i.e., an SD and/or MSP] or conducts swaps activity on behalf of a Swap Entity and is also registered as an AP of a different firm.” 11 When adopting the Final Registration Regulations, the Commission stated that “[w]hile the Commission agrees with the commenter’s recommendation, it anticipates promptly addressing this issue in a future rulemaking.” 12

Regulation 3.12(f)(1)(i) permits dual and multiple associations of a person registered as an AP. 13 Regulation 3.12(f)(1)(ii) provides that each sponsor of the AP is required to supervise the AP, and that each sponsor is jointly and severally responsible for the AP’s activities with respect to any customers common to it and any other sponsor with which the AP is associated. 14 This joint and several responsibility provision is intended to prevent situations where each sponsor might disclaim responsibility for the AP’s activities—that is, that each sponsor would claim that the dually associated AP was not acting on its behalf but, rather, for the other sponsor, and therefore the other sponsor should be held responsible for the conduct in question. 15 However, because, as noted above, the Commission has not adopted regulations requiring the registration of APs of SDs and MSPs, the provisions of Regulation 3.12(f)(1), which apply to a sponsoring registrant with respect to its APs who are registered or seeking to register as such, do not apply to SDs and MSPs and their APs.

To address this issue, on June 15, 2012, the Commission proposed amendments to Regulation 3.12(f) and Regulation 23.22 (Proposal) to provide that an AP of an SD or MSP may associate with one or more other SDs, MSPs or other Commission registrants (i.e., FCMS, retail foreign exchange dealers (RFEDs), ICs, CTA, CPOs, and LMTs), and that each SD, MSP or other Commission registrant with whom the AP is associated is required to supervise the AP and is jointly and severally responsible for the conduct of the AP with respect to customers common to it and any other SD, MSP or other Commission registrant with whom the AP is associated. 16

II. Comments on the Proposal

In the Proposal, the Commission requested comment on all aspects of the proposal and, in particular, on whether it should adopt a provision (in both new Regulation 3.12(f)(5) and new Regulation 23.22(c)) that would provide a mechanism to notify SDs, MSPs, and existing sponsors of registered APs when one of their APs seeks to become associated with another SD or MSP (or, in the case of an AP of an SD or MSP, seeks to register as an AP of another Commission registrant). 17

The Commission received one comment letter on the Proposal. The letter supported the Proposal, stating that:

[The] proposal will help to ensure that SDs, MSPs and other Commission registrants do not avoid supervision of an AP’s responsibility for the activities of their APs with such dual or multiple associations; increase transparency of lines of responsibility and promote accountability therein; improve investor protection with the other Commission regulations pertaining to such dual or multiple associations; and improve protection for both market participants and the public by obliging each SD, MSP or other Commission registrant to supervise its APs who have such dual or multiple associations. 18

The comment letter also supported the adoption of a regulation that would provide a mechanism to notify SDs, MSPs and existing sponsors of registered APs when one of their APs seeks to become associated with another SD or MSP. After further considering this issue, the Commission has determined not to adopt such a regulation. The Commission believes

10 See CEA Section 4s(b)(6) and Regulation 23.22(b).

11 Comment letter from the National Futures Association at page 10 (Jan. 24, 2011).

12 72 FR at 2616.

13 Regulation 3.12(f)(1)(i) provides that a person who is already registered as an AP in any capacity may become associated with another sponsor if the new sponsor files with the NFA a Form 8–R.

14 The term “sponsor” is defined in Regulation 3.1(c) to mean “the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of [Part 3] for the registration of an associated person of such sponsor.”

15 The Commission adopted this joint and several responsibility provision in 1992 in connection with amendments to Regulation 3.12(f) that eliminated then-existing restrictions on dual and multiple associations in many circumstances. 57 FR 23136 (June 2, 1992) (1992 Amendments). The Commission first adopted a prohibition on dual and multiple associations in 1980, with respect to APs of futures commission merchants (FCMs), explaining that it was necessary “[i]n view of the obvious difficulties of supervision in such a situation and in view of the inherent possibilities for conflicts of interest that might arise if an AP were to have more than one sponsor.” 45 FR 80485, 80489 (Dec. 5, 1980) (footnote omitted).

Subsequently, the Commission amended and broadened the scope of Regulation 3.12(f) such that,

16 Under Regulation 3.12(f)(1), a person registered as an AP may become an AP of another sponsor if the new sponsor files a Form 8–R with NFA, and NFA, in turn, is required to notify any existing sponsor of the AP that the person has applied to become associated, associated with an AP. This notification puts sponsors on notice that their registered APs will subject them to additional supervisory and joint and several responsibility requirements under Regulation 3.12(f). Employment as an AP of an SD or MSP, however, does not require registration with the Commission and, thus, the filing of a Form 8–R with NFA.

17 More recently (and subsequently to the Proposal), NFA amended NFA Bylaw 301 to add a new paragraph 301[(f) Eligibility to Conduct Swaps Activities], which requires NFA Member FCMS, ICs, CPOs and CTAs and their APs that engage in swaps activity that is subject to Commission jurisdiction to be approved by NFA as a “swaps firm” or “swaps associated person,” as applicable. The amendments also provide that in order to obtain NFA approval as a swaps firm, at least one of the firm’s principals must be registered as an AP and approved as a swaps associated person. The amendments are intended to enable NFA to identify entities and individuals that are engaging in swaps activities. However, these requirements do not apply to SDs, MSPs or their APs, nor do they apply with respect to APs of an FCN that is also registered as an SD if the APs do not engage in activity on behalf of the firm in its capacity as an FCN. See NFA Notice to Members 1–12–24 (Oct. 3, 2012).

18 Comment letter from Chris Barnard at page 1 (July 24, 2012).
that each SD, MSP and other Commission registrant is best positioned to determine policies and procedures it will need to implement in order to determine whether any of its APs are associated with another SD or MSP.

III. The Final Regulations

A. Regulations 3.12(f)(5) and 23.22(c)

In light of the foregoing, the Commission is adopting as proposed regulations to provide for dual and multiple associations of persons associated with SDs, MSPs and other Commission registrants. Specifically, Regulation 3.12(f)(5)(i)(A) applies where a person associated as a registered AP of one or more (other) Commission registrants seeks to become associated as an AP of one or more SDs or MSPs; Regulation 3.12(f)(5)(i)(B) applies where a person associated as an AP of one or more SDs or MSPs seeks to become associated as a registered AP of one or more other Commission registrants; and Regulation 23.22(c) applies where a person associated as an AP of an SD or MSP seeks to become associated as an AP of one or more other SDs or MSPs.20 The regulations make clear that each SD, MSP and other Commission registrant with whom the AP is associated is required to supervise the AP and is jointly and severally responsible for the activities of the AP with respect to customers common to it and any other SD, MSP or other Commission registrant. As proposed and as adopted, the regulations are based on the form and text of current Regulation 3.12(f)(1).21

20 As discussed in the Proposal, two separate regulations addressing dual and multiple associations of APs of SDs and MSPs are necessary because, as noted above, the term “sponsor” and the provisions of Regulation 3.12(f) do not apply to SDs and MSPs with respect to their APs (who are not subject to a registration requirement).

21 Thus, for example, Regulation 3.12(f)(5)(i)(B) provides that where an AP of an SD or MSP seeks to register as an AP of another Commission registrant, the new sponsor must meet the requirements of Regulation 3.60(b)(2)(i)(A) and (B), as is required of a new sponsor under current Regulation 3.12(f)(1). However, Regulation 3.12(f)(5)(i)(A) provides that an SD or MSP seeking to associate with an already registered AP must meet the requirements of Regulation 3.60(b)(2)(i)(A), but not also the requirements of Regulation 3.12(f)(3)(i)(A). This is because the requirements of the former regulation concern specified adjudicatory proceedings which would be applicable to SDs and MSPs while the requirements of the latter regulation concern financial requirements which are not applicable to SDs and MSPs.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)22 requires federal agencies, in promulgating regulations, to consider whether those regulations will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis respecting the impact. A regulatory flexibility analysis or certification typically is required for “any rule for which the agency publishes a general notice of proposed rulemaking pursuant to” the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).23 As discussed in the Proposal, the Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.24 The Commission previously has determined that FCMs, registered CPOs,25 LTMs and RFEFs are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to those entities.26 In addition, in connection with its adoption of the Final Registration Regulations, the Commission determined that SDs and MSPs are not small entities for purposes of the RFA.27 Therefore, the requirements of the RFA do not apply to SDs and MSPs. With respect to CTAs and IBs, the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all of the affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of the particular regulation.28 The Commission notes that the regulations being published by this Federal Register release will only impact, potentially, registered CTAs and registered IBs,29 and the number of such impacted entities, if any, should likely be very small.30 The Commission did not receive any comments regarding its RFA analysis in the Proposal. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the regulations being published today by this Federal Register release will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)31 imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The regulations being published by this Federal Register release expressly obligate each SD, MSP and other Commission registrant to supervise their APs who have dual and multiple associations and make each SD, MSP and other Commission registrant jointly and severally responsible for the activities of such APs with respect to customers common to it and any other SD, MSP or other Commission registrant. As discussed in the Proposal, the regulations contain no provision that would impose a “burden” or “collection of information” as those terms are defined in the PRA.32 The Commission did not receive any comments regarding its PRA analysis in the Proposal. Accordingly, for purposes of the PRA, the Chairman, on behalf of the Commission, certifies that the regulations being published today by this Federal Register release will not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Considerations

Section 15(a) of the CEA 33 requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market existing association is with a person (e.g., a CTA or an IB) who is not registered with the Commission.

30 See Amendments to Commodity Pool Operator and Commodity Trading Advisor Regulations Resulting from the Dodd-Frank Act, 76 FR 11701, 11703 [Mar. 3, 2011] (noting with regard to RFA considerations that the regulations proposed therein would only impact registered CTAs). As of October 19, 2012, less than three percent of all registered APs (or approximately 1500 APs) were associated on a dual or multiple basis with Commission registrants.

31 44 U.S.C. 3501 et seq.

32 77 FR 35892, 35895 [June 15, 2012].

33 7 U.S.C. 19(a).
participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

As discussed above, the Commission is adopting regulations to specify the responsibilities applicable with respect to dual and multiple associations of APs of SDs and MSPs, and particularly, that such associations are permitted, but that they implicate the joint and several supervisory and responsibility provisions applicable with respect to such associations under Regulation 3.12(f). As noted above, prior to the adoption of these regulations, no regulations addressed dual and multiple associations of APs of SDs and MSPs and the obligations of those persons with whom they are associated concerning common customers.

Thus, the primary benefits of the regulations being adopted by the Commission include the same benefits noted by the Commission when it first adopted the supervisory and joint and several responsibility provisions under Regulation 3.12(f), namely, the prevention of circumstances where an SD, MSP or other Commission registrant seeks to avoid responsibility for the activities of an AP who has dual or multiple associations by asserting the conduct in question was not within the purview of its supervisory responsibilities with respect to the AP. Therefore, the Commission believes the regulations being published by this Federal Register release will provide protection to market participants and the public by expressly obligating each SD, MSP or other Commission registrant to supervise its APs who have dual or multiple associations and by subjecting each SD, MSP and other Commission registrant to joint and several responsibility for the activities of such APs with respect to customers common to it and any other SD, MSP or other Commission registrant. More specifically, the regulations will prevent SDs, MSPs and other Commission registrants from disclaiming responsibility for the activities of their APs who have dual and multiple associations.

(2) The Efficiency, Competitiveness, and Financial Integrity of the Futures Markets

The Commission does not expect the regulations to have an impact on the efficiency, competitiveness and financial integrity of the futures market.

(3) The Market’s Price Discovery Functions

The Commission does not expect the regulations to have an impact on the market’s price discovery functions.

(4) Sound Risk Management Practices.

The Commission does not expect the regulations to have an impact on risk management practices by SDs, MSPs and other Commission registrants.

(5) Other Public Interest Considerations.

The Commission has not identified any other public interest considerations in light of which it should consider the costs and benefits of the regulations.

List of Subjects

17 CFR Part 3

Associated persons, Brokers, Commodity futures, Customer protection, Major swap participants, Registration, Swap dealers.

17 CFR Part 23

Associated persons, Commodity futures, Customer protection, Major swap participants, Registration, Reporting and recordkeeping requirements, Swap dealers.

For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6m, 6n, 6o, 6p, 6q, 6r, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

2. Section 3.12 is amended by adding new paragraph (f)(5) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * * *(f) * * * *(5)(i)(A) A person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person of a swap dealer or major swap participant if the swap dealer or major swap participant meets the requirements set forth in § 3.60(b)(2)(i)(A).

(B) A person who is already associated as an associated person of a swap dealer or major swap participant may become registered as an associated person of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the person intends to associate meets the
requirements set forth in § 3.60(b)(2)(I)(A) and (B).

(ii) Each sponsor and each swap dealer and/or major swap participant with whom the person is associated shall supervise that associated person, and each sponsor and each swap dealer and/or major swap participant is jointly and severally responsible for the conduct of the associated person with respect to the:

(A) Solicitation or acceptance of customer orders,

(B) Solicitation of funds, securities or property for a participation in a commodity pool,

(C) Solicitation of a client’s or prospective client’s discretionary account,

(D) Solicitation or acceptance of leverage customers’ orders for leverage transactions,

(E) Solicitation or acceptance of swaps, and

(F) Associated person’s supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, swap dealer, or major swap participant with which the associated person is associated.

§ 3.60(b)(2)(i)(C) and (B).

Pedestrians and motorized vehicles will also be prohibited from entering into, transiting through, or anchoring in the safety zone around the fireworks barge off of Pier 50 in approximate position 37°46′28″ N, 122°23′06″ W (NAD 83) from 11 a.m. until 9:30 p.m. on April 19, 2013. From 8:30 p.m. to 8:40 p.m. on April 19, 2013 the loaded barge will transit from Pier 50 to the launch site near Pier 48 in position 37°46′30″ N, 122°23′01″ W (NAD83). The 100 foot safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. Upon the commencement of the 15 minute fireworks display, scheduled to take place between 9:30 p.m. and 10:15 p.m. on April 19, 2013, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet around the launch site near Pier 48 in position 37°46′38″ N, 122°23′01″ W (NAD83) for the San Francisco Giants Fireworks Display in 33 CFR 165.1191, Table 1, Item number 4.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the Federal Register, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.