

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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

**I. Introduction**

A. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>1</sup> Section 731 of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)<sup>2</sup> 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.<sup>3</sup> To effectuate the Congressional directive that an SD or MSP apply for registration in such form and manner as prescribed by the Commission,<sup>4</sup> on November 23, 2010, the Commission proposed regulations to establish a registration process for SDs and MSPs (Proposed Registration Regulations),<sup>5</sup> and on January 19, 2012, the Commission adopted regulations that establish a registration process for SDs and MSPs (Final Registration Regulations).<sup>6</sup>

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<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed through the Commission’s Web site, <http://www.cftc.gov>.

<sup>2</sup> 7 U.S.C. 1 *et seq.* (2006). The Commission’s regulations are found at 17 CFR Part 1 *et seq.* (2012). Both the CEA and the Commission’s regulations also may be accessed through the Commission’s Web site.

<sup>3</sup> CEA Section 4s(a).

<sup>4</sup> CEA Section 4s(b).

<sup>5</sup> 75 FR 71379.

<sup>6</sup> 77 FR 2613. Concurrently, through a separate Notice and Order, the Commission delegated to the National Futures Association (NFA) the authority to perform the full range of registration functions with respect to SDs and MSPs. 77 FR 2708 (Jan. 19, 2012).

Subsequently, the Commission issued regulations that further define the terms “swap dealer” and “major swap participant.” 77 FR 30596 (May 23, 2012). In this regard, the Commission notes that pursuant to CEA Section 1a(49)(D), CFTC Regulation 1.3(ggg)(4) establishes a de minimis exception from the SD definition, thereby allowing a person who otherwise meets the criteria for being an SD to engage in a certain amount of swap dealing activity without being required to register as an SD. If a person exceeds the de minimis amount of swap dealing at the effective date of the swap definition, then CFTC Regulation 1.3(ggg)(4)(iii) provides that the person must register as an SD by no later than two months from the end of the month in which it exceeded the de minimis threshold, i.e., December 31, 2012. Similarly, the definition of MSP in CFTC Regulation 1.3(hhh)(3) generally requires a person that meets the MSP definition as a result of its swaps activity in a fiscal quarter to register as an MSP no later than two months after the

Although APs of other Commission registrants are generally required to register with the Commission,<sup>7</sup> APs of SDs and MSPs<sup>8</sup> are not required to register as such.<sup>9</sup> However, an SD or MSP is prohibited from permitting any person associated with it to effect or be involved in effecting swaps on its behalf if such person is subject to a statutory disqualification.<sup>10</sup>

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 on dual and 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

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end of that quarter, with the earliest possible date by which the person should be registered as an MSP being February 28, 2013 (i.e., two months from the quarter end on December 31, 2012).

<sup>7</sup> See, e.g., CEA Section 4k and Commission Regulation 3.12(a). Regulation 3.12(c) provides that application is made through the filing of a Form 8-R, accompanied by a specified certification from the registrant who will be employing the AP – i.e., the AP’s sponsor.

<sup>8</sup> As is the case for other categories of Commission registrants, the term “associated person,” when used with respect to an SD or MSP, means a natural person (as opposed to an entity, such as a partnership or corporation). See 77 FR at 2614-15, whereby the Commission adopted in new Regulation 1.3(aa)(6) a definition of the term “associated person” of an SD or MSP to mean a natural person who is associated with an SD or MSP as:

[A] partner, officer, employee, agent (or any natural person occupying a similar status or performing similar functions), in any capacity that involves:

- (i) The solicitation or acceptance of swaps (other than in a clerical or ministerial capacity); or
- (ii) The supervision of any person or persons so engaged.

<sup>9</sup> Section 731 did not direct the Commission to adopt regulations that provide for the registration of APs of SDs and MSPs, and, thus, the Commission has not done so. See 77 FR at 2613.

<sup>10</sup> See CEA Section 4s(b)(6) and Regulation 23.22(b).

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.”<sup>11</sup> 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.”<sup>12</sup>

Regulation 3.12(f)(1)(i) permits dual and multiple associations of a person registered as an AP.<sup>13</sup> Regulation 3.12(f)(1)(iii) provides that each sponsor<sup>14</sup> 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.<sup>15</sup> This joint and several responsibility provision is

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<sup>11</sup> Comment letter from the National Futures Association at page 10 (Jan. 24, 2011).  
<sup>12</sup> 77 FR at 2616.

<sup>13</sup> 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.

<sup>14</sup> 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.”

<sup>15</sup> 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, prior to the 1992 Amendments, Regulation 3.12(f) prohibited a person from associating as an AP with: (1) more than one FCM or more than one introducing broker (IB); (2) an FCM and an IB or a leverage transaction merchant (LTM); and (3) an IB and an LTM. Subject to certain exceptions, the regulations also prohibited a person from associating as an AP with: (1) an FCM and a commodity trading advisor (CTA);

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.<sup>16</sup> 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), IBs, CTAs, CPOs, and LTMs), 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

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(2) an FCM and a commodity pool operator (CPO); (3) an IB and a CTA; and (4) an IB and a CPO. See 56 FR 37026, 37033 (Aug. 2, 1991). In proposing to eliminate most of these restrictions, the Commission explained that, in its experience, these regulations had been “difficult to understand and follow, even for experienced practitioners” and that, in certain cases, they could have perverse effects, such as limiting the choice of which FCM a customer could use to carry his managed account. Id. Moreover, the Commission explained, the concerns raised by dual and multiple associations could be better addressed through an alternative approach, as further discussed below. Id.

<sup>16</sup> See 56 FR at 37033; see, e.g., In Re Global Telecom, et al., [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,143 (CFTC Oct. 4, 2005) (holding an FCM liable for the activities of its APs who were also APs of a CTA, and noting that holding otherwise would “bring about the very situation the rule is aimed at preventing—one in which a futures customer who contracts with two entities to receive two products or services is left with nobody minding the store”).

the AP with respect to customers common to it and any other SD, MSP or other Commission registrant with whom the AP is associated.<sup>17</sup>

## 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).<sup>18</sup>

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 and responsibility for the activities

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<sup>17</sup> 77 FR 35892.

<sup>18</sup> 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 with another sponsor. 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.

More recently (and subsequent to the Proposal), NFA amended NFA Bylaw 301 to add a new paragraph 301(l) (Eligibility to Conduct Swaps Activities), which requires NFA Member FCMs, IBs, 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 FCM that is also registered as an SD if the APs do not engage in swaps activity on behalf of the firm in its capacity as an FCM. See NFA Notice to Members I-12-24 (Oct. 3, 2012).

of their APs with such dual or multiple associations; increase transparency of lines of responsibility and promote accountability thereon; improve internal consistency with the other Commission regulations pertaining to such dual or multiple associations; and improve protection for both market participants and the public by obligating each SD, MSP or other Commission registrant to supervise its APs who have such dual or multiple associations.<sup>19</sup>

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 that each SD, MSP and other Commission registrant is best positioned to determine the 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

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<sup>19</sup> Comment letter from Chris Barnard at page 1 (July 24, 2012).

to become associated as an AP of one or more other SDs or MSPs.<sup>20</sup> 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).<sup>21</sup>

#### **IV. Related Matters**

##### **A. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA)<sup>22</sup> 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

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<sup>20</sup> 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).

<sup>21</sup> 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 3.60(b)(2)(i)(B). 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.

<sup>22</sup> 5 U.S.C. 601 et seq.



Administrative Procedure Act, 5 U.S.C. 553(b).<sup>23</sup> 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.<sup>24</sup> The Commission previously has determined that FCMs, registered CPOs,<sup>25</sup> LTMs and RFEDs are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to those entities.<sup>26</sup> 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.<sup>27</sup> 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 or some 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.<sup>28</sup> The Commission notes that the regulations being published by

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<sup>23</sup> 5 U.S.C. 601(2), 603, 604 and 605.

<sup>24</sup> 47 FR 18618 (Apr. 30, 1982).

<sup>25</sup> To the extent the regulations being published by this Federal Register release (specifically, new Regulation 3.12(f)(5)) would have an impact on CPOs, it would only impact registered CPOs, since Regulation 3.12(f), by its terms, would not apply where an AP’s new or existing association is with a person who is not registered with the Commission.

<sup>26</sup> See 47 FR at 18619-20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs); 75 FR 55410, 55416 (Sept. 19, 2010) (discussing RFEDs).

<sup>27</sup> See 77 FR 2613, 2620 (Jan. 19, 2012) (adopting the Final Registration Regulations).

<sup>28</sup> See 47 FR at 18619 (discussing CTAs); 48 FR 35248, 35276-77 (Aug. 3, 1983) (discussing IBs).

this Federal Register release will only impact, potentially, registered CTAs and registered IBs,<sup>29</sup> and the number of such impacted entities, if any, should likely be very small.<sup>30</sup>

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)<sup>31</sup> 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

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<sup>29</sup> This is because, as noted above, Regulation 3.12(f) would not apply where an AP's new or existing association is with a person (e.g., a CTA or an IB) who is not registered with the Commission.

<sup>30</sup> 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.

<sup>31</sup> 44 U.S.C. 3501 et seq.

provision that would impose a “burden” or “collection of information” as those terms are defined in the PRA.<sup>32</sup>

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<sup>33</sup> 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 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

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<sup>32</sup> 77 FR 35892, 35895 (June 15, 2012).

<sup>33</sup> 7 U.S.C. 19(a).

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 ensuring that such APs will be adequately supervised, and those charged with supervising them will be held responsible for failing to do so. The Commission does not believe that compliance with the regulations being adopted will impose any significant, new cost on SDs or MSPs.

By this rulemaking, APs of SDs and MSPs that have dual or multiple associations will be subject to the same regulatory regime as APs of other Commission registrants that have dual or multiple associations, and SDs and MSPs (or other Commission registrants) employing an AP with dual or multiple associations will be prevented from attempting to disclaim responsibility for the activities of the AP by asserting that the AP was not acting on its behalf, but rather on behalf of another SD or MSP with whom the AP was associated (with respect to their common customers). These amendments will yield a substantial if unquantifiable benefit to the public because they will prevent SDs, MSPs and other Commission registrants from seeking to avoid supervision of and responsibility

for the activities of their APs who have dual or multiple associations with respect to their common customers.

Section 15(a) Factors

Section 15(a) specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

- (1) The protection of market participants and the public.

As discussed above, the Commission believes the regulations it is adopting 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, 6k, 6m, 6n, 6o, 6p, 6s, 8, 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.

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(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) of this part.

(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) of this part.

(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 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.

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#### PART 23 – SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

3. The authority citation for Part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 13b, 13c, 16a, 18, 19, 21 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).

4. Section 23.22 is amended by adding paragraph (c) to read as follows:

§23.22 Associated persons of swap dealers and major swap participants.

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(c) Dual and multiple associations. (1) A person who is already associated as an associated person of a swap dealer or major swap participant may become associated as an associated person of another swap dealer or major swap participant if the other swap



dealer or major swap participant meets the requirements set forth in § 3.60(b)(2)(i)(A) of this chapter.

(2) Each swap dealer and major swap participant associated with such associated person shall supervise that associated person, and each swap dealer and major swap participant is jointly and severally responsible for the conduct of the associated person with respect to the:

- (i) Solicitation or acceptance of customer orders,
- (ii) Solicitation of funds, securities or property for a participation in a commodity pool,
- (iii) Solicitation of a client's or prospective client's discretionary account,
- (iv) Solicitation or acceptance of leverage customers' orders for leverage transactions,
- (v) Solicitation or acceptance of swaps, and
- (vi) 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 swap dealer or major swap participant.

Issued in Washington, DC, on March 29, 2013, by the Commission.



Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.