



**COMMODITY FUTURES TRADING COMMISSION**

**6351-01**

**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:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations that would 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 (Proposal).

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AD66 and “Dual and Multiple Associations of Persons Associated with Swap Dealers, Major Swap Participants and other Commission Registrants,” by any of the following methods:

- Agency Web Site, via its Comments Online process: <http://comments.cftc.gov>.

Follow the instructions on the web site for submitting comments.

- Mail: Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, DC 20581.
- Hand delivery/Courier: Same as Mail above.
- Federal eRulemaking Portal: <http://www.regulations.gov/search/index.jsp>. Follow the instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to [www.cftc.gov](http://www.cftc.gov) and the information you submit will be publicly available. If, however, you submit information that ordinarily is exempt from disclosure under the Freedom of Information Act, you may submit a petition for confidential treatment of the exempt information according to the procedures set forth in Commission Regulation 145.9.<sup>1</sup> 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 [www.cftc.gov](http://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<sup>2</sup> and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Israel J. Goodman, Attorney-Advisor, or Barbara S. Gold, Associate Director, Division of Swap Dealer and Intermediary Oversight,

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<sup>1</sup> Commission regulations referred to herein are found at 17 CFR Ch. 1 (2011). They are accessible on the Commission's Web site, <http://www.cftc.gov>.

<sup>2</sup> 5 U.S.C. 500 *et seq.*

1155 21st Street, NW, Washington, DC 20581. Telephone number: 202-418-6700 and electronic mail: [igoodman@cftc.gov](mailto:igoodman@cftc.gov) or [bgold@cftc.gov](mailto:bgold@cftc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

#### A. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>3</sup> Section 731 of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)<sup>4</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>5</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>6</sup> on November 23, 2010, the Commission proposed regulations to establish a registration process for SDs and MSPs (Proposed Registration Regulations),<sup>7</sup> and on January 19, 2012, the Commission adopted regulations that establish a registration process for SDs and MSPs (Final Registration Regulations).<sup>8</sup>

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<sup>3</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 also may be accessed on the Commission’s Web site, <http://www.cftc.gov>.

<sup>4</sup> 7 U.S.C. 1 et seq.

<sup>5</sup> CEA Sections 4s(a).

<sup>6</sup> CEA Section 4s(b).

<sup>7</sup> 75 FR 71379.

<sup>8</sup> 77 FR 2613. Additionally, 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).

However, Section 731 did not direct the Commission to adopt regulations that provide for the registration of APs of SDs and MSPs.<sup>9</sup> Thus, unlike APs of other Commission registrants, who are generally required to register with the Commission,<sup>10</sup> APs of SDs and MSPs are not required to register as such.<sup>11</sup> Although APs of SDs and MSPs are not subject to registration with the Commission, 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>12</sup>

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 currently found 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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<sup>9</sup> See 77 FR at 2613 (noting that CEA Section 4s does not direct the Commission to adopt regulations that provide for the registration of APs of SDs or MSPs).

<sup>10</sup> See, e.g., CEA Section 4k and Commission Regulation 3.12(a).

<sup>11</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 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>12</sup> See CEA Section 4s(b)(6) and Regulation 23.22(b).

more than one Swap Entity [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>13</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>14</sup> The Proposal addresses this issue.

B. Regulation 3.12(f)

Regulation 3.12 concerns the registration of those persons who must register as an AP of a Commission registrant. 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.” 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.”

Regulation 3.12(f)(1)(i) permits dual and multiple associations of a person registered as an AP.<sup>15</sup> Regulation 3.12(f)(1)(iii) 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. The Commission adopted this joint and several responsibility provision in

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<sup>13</sup> Comment letter from the National Futures Association at page 10 (Jan. 24, 2011).

<sup>14</sup> 77 FR at 2616.

<sup>15</sup> Section 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, as discussed below.

1992 in connection with amendments to Regulation 3.12(f) that eliminated then-existing restrictions on dual and multiple associations in many circumstances.<sup>16</sup> The provision was intended to address concerns that permitting dual and multiple associations would lead to 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>17</sup>

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<sup>16</sup> 57 FR 23136 (June 2, 1992) (the 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).

The Commission subsequently 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); (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>17</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”).

In connection with the 1992 Amendments, the Commission also amended Regulation 3.12(f) to require that the new sponsor file with the NFA a Form 3-R signed by the AP's

However, and, as explained above, the Dodd-Frank Act does not direct the Commission to provide for – and, thus, the Commission has not adopted regulations requiring – the registration of APs of SDs and MSPs. As a result, the provisions of current Regulation 3.12(f)(1), which apply to a sponsoring registrant with respect to its APs who are required to register as such, do not apply to SDs and MSPs and their APs.

## **II. The Proposed Regulations**

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

The Proposal would provide for dual and multiple associations of persons associated with SDs, MSPs and other Commission registrants (i.e., FCMs, retail foreign exchange dealers (RFEDs), IBs, CTAs, CPOs, and LTMs). Specifically, proposed Regulation 3.12(f)(5)(i)(A) would apply 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; proposed Regulation 3.12(f)(5)(i)(B) would apply 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 proposed Regulation 23.22(c) would apply where a person associated as an AP of an SD or MSP seeks to become associated as an AP of one or more

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existing sponsor and that included, among other things, an acknowledgement by each sponsor that, in addition to each sponsor's responsibility to supervise the AP, each sponsor was jointly and severally responsible for the conduct of the AP with respect to customers common to it and any other sponsor. 57 FR at 23146. By signing the Form 3-R, each sponsor would make clear that it was aware of the new association and that it was jointly and severally responsible for the AP's conduct. Id. at 23141. As further discussed in Part II.B of this Federal Register release, the Commission subsequently amended Regulation 3.12(f) to eliminate the requirement for each sponsor to sign a Form 3-R and to specifically acknowledge joint and several responsibility therein.

other SDs or MSPs.<sup>18</sup> The Proposal would 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. These proposed regulations are based on the form and text of current Regulation 3.12(f)(1).<sup>19</sup>

B. Request for Comments

The Commission requests comments on all aspects of the Proposal. In particular, the Commission is requesting comment on whether it should adopt a provision (in both Regulation 3.12(f)(5) and 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). These provisions would serve the purpose of putting any other SD, MSP or other registrant associated with the AP on notice that it is (or will become) subject to the supervisory and joint and several responsibility requirements of Regulation 3.12(f) that would be applicable to it as a result of the regulations

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<sup>18</sup> 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 current Regulation 3.12(f) do not, by their terms, apply to SDs and MSPs with respect to their APs (who are not subject to a registration requirement).

<sup>19</sup> Thus, for example, proposed 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, proposed 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.

proposed herein. Under current Regulation 3.12(f)(1), which does not address dual and multiple associations with SDs and MSPs, 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. Thus, the current regulations provide a mechanism through which sponsors are put on notice that their registered APs will subject them to additional supervisory and joint and several responsibility requirements under Regulation 3.12(f).<sup>20</sup> 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. Therefore, NFA would not otherwise be aware of a particular person's current or planned association with an SD or MSP and would not be in a position to notify other SDs, MSPs or existing sponsors. To the extent commenters believe it is necessary to adopt regulations aimed at providing such notice, the Commission also is seeking comment specifically on how to do so. One potential mechanism would be to require any SD, MSP or other Commission registrant seeking to associate with an AP who is also associated with another SD or MSP to notify the other SD or MSP that the AP is or intends to become associated with the SD, MSP or other Commission registrant.

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<sup>20</sup> See 67 FR 38869 (June 6, 2002). The Commission adopted Regulation 3.12(f)(1)(ii) in 2002, in connection with other amendments to Regulation 3.12 to accommodate NFA's implementation of an online registration system. Prior to that time, a potential sponsor of an already registered AP was required to file a Form 3-R that included a certification signed by it and any existing sponsor acknowledging their supervisory obligations and their joint and several responsibility with respect to the AP's activities. In eliminating these requirements, the Commission explained that continuing to require a signature from each sponsor would result in unnecessary costs and delays under the new electronic filing system, and that the acknowledgment was not needed because Commission regulations make clear that each sponsor is required to supervise the AP and is jointly and severally responsible for his or her conduct. Instead, as adopted, Regulation 3.12(f)(1)(ii) requires NFA to notify existing sponsors of the AP of the application. *Id.* at 38870-71.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>21</sup> requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.<sup>22</sup> The Commission previously has determined that FCMs, registered CPOs,<sup>23</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>24</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>25</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>26</sup> The Commission notes that the Proposal would

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<sup>21</sup> 5 U.S.C. 601 et seq.

<sup>22</sup> 47 FR 18618 (Apr. 30, 1982)

<sup>23</sup> To the extent the Proposal (specifically, proposed 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>24</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>25</sup> See 77 FR at 2620 (adopting the Final Registration Regulations).

<sup>26</sup> See 47 FR at 18619 (discussing CTAs); 48 FR 35248, 35276-77 (Aug. 3, 1983) (discussing IBs).

only impact, potentially, registered CTAs and registered IBs,<sup>27</sup> and the number of such impacted entities, if any, should likely be very small.<sup>28</sup> Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposal will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)<sup>29</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 Proposal would 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. The Proposal contains no provision that would impose a “burden” or “collection of information” as those terms are defined in the PRA.<sup>30</sup>

#### C. Cost-Benefit Considerations

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<sup>27</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>28</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 February 7, 2011, less than three percent of all registered APs (or less than 1500 APs) were associated on a dual or multiple basis with Commission registrants.

<sup>29</sup> 44 U.S.C. 3501 et seq.

<sup>30</sup> See 44 U.S.C. 3502(2) and (3).

In response to the Proposed Registration Regulations, a commenter requested that the Commission address “situations in which an individual conducts swaps-related activity on behalf of more than one Swap Entity [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.” The Proposal addresses that issue, and in the following paragraphs, the Commission is considering the costs and benefits of the proposal in accordance with CEA section 15(a).<sup>31</sup>

As described in the text above, the Commission is proposing 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 existing Regulation 3.12(f).

As noted above, existing regulations addressing dual and multiple associations of APs do not address 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 Proposal include the same benefits noted by the Commission when it adopted the supervisory and joint and several responsibility provisions under current 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 Proposal 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

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<sup>31</sup> 7 U.S.C. 19(a).

does not believe that compliance with the Proposal will impose any significant, new cost on SDs or MSPs but, as discussed below, the Commission seeks comment on the same, including the potential insurance and litigation costs associated with joint and several responsibility for APs of SDs and MSPs with dual and multiple associations.

Consideration of Costs and Benefits Relative to the Alternative of Not Taking Any Action

Under current Commission regulations, SDs and MSPs are not subject to the joint supervisory and responsibility requirements applicable to other Commission registrants with respect to the activities of their APs who have dual or multiple associations.<sup>32</sup> This current situation provides a reference point from which to compare the costs and benefits of the proposed regulations to the alternative of not taking any action – that is, where SDs and MSPs, though required to register, would not be subject to the supervisory or joint and several responsibility provisions under (proposed) Regulation 3.12(f) or Regulation 23.22(c), as applicable, for the activities of their APs that are also APs of other SDs, MSPs, or other Commission registrants.<sup>33</sup> Under such a scenario, the costs to the public of inaction would, in qualitative terms, be that: (1) APs of SDs and MSPs that have dual or multiple associations would not be subject to the same regulatory regime as APs of other Commission registrants that have dual or multiple associations; and (2) SDs and MSPs (or other Commission registrants) employing an AP with dual or multiple associations would not be prevented from

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<sup>32</sup> As noted above, these requirements, which are set forth in existing Regulation 3.12(f)(1)(iii), apply to the activities of such APs with respect to the common customers of the APs' employing registrants.

<sup>33</sup> Similarly, and as noted above, these proposed requirements would apply to the activities of such APs with respect to the common customers of the APs' employing SDs, MSPs and/or other Commission registrants.

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). In contrast, the amendment to Regulation 3.12(f) and the adoption of Regulation 23.22(c) would yield a substantial if unquantifiable benefit to the public relative to inaction by preventing 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 the common customers of the SDs, MSPs and other Commission registrants.

#### 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 Proposal 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 registrants. More specifically, the Proposal 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 Proposal 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 Proposal to have an impact on the market's price discovery functions.

(4) Sound risk management practices.

The Commission does not expect the Proposal 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 Proposal. The Commission specifically requests comment on its cost and benefit considerations of the Proposal, as discussed above.

The Commission requests comment on all aspects of its proposed consideration of costs and benefits, including identification and assessment of any costs and benefits not discussed above, such as costs associated with determining if a potential AP is already associated with another SD, MSP or other Commission registrant. In addition, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on the Commission's proposed considerations of costs and benefits.

**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 proposes to amend 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.**

\* \* \* \* \*

(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,

(i) 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.

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**David A. Stawick**  
Secretary of the Commission

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