major swap participants and swap dealers, regardless of whether they are required to register with the Commission. This part does not apply to foreign futures commission merchants, foreign retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers unless such entity registers with the Commission. Nothing in this part modifies limits or supersedes the requirements set forth in part 160 of this title.

(c) Examples. The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a section illustrate only the issue described in the section and do not illustrate any other issue that may arise in this part.

§ 162.2 Definitions.

(a) Affiliate. The term “affiliate” for the purposes of this part means any person that is related by common ownership or common corporate control with a covered affiliate.

(b) Clear and conspicuous. The term “clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information presented in the notice.

(c) Common ownership or common corporate control. The term “common ownership or common corporate control” for the purposes of this part means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of a company will be presumed not to control the company.

(d) Company. The term “company” means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) Concise.—

(1) In general. The term “concise” means a reasonably brief expression or statement.

(2) Combination with other required disclosures. A notice required by this part may be concise even if it is combined with other disclosures required or authorized by Federal or state law.

(f) Consumer. Except as otherwise provided, the term “consumer” means an individual person. The term consumer does not include market makers, floor brokers, locals, or individual persons whose information is not collected to determine eligibility for personal, family, or household purposes.

(g) Consumer information. The term “consumer information” means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report (as defined in section 603(d)(2) of the FCRA). Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(h) Covered affiliate. The term “covered affiliate” means a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant or swap dealer, which is subject to the jurisdiction of the Commission.

(i) Dispose or Disposal.—

(1) In general. The terms “dispose” or “disposal” means:

(i) The discarding or abandonment of consumer information; or

(ii) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

(2) Sale, donation, or transfer of consumer information. The sale, donation, or transfer of consumer information is not considered disposal for the purposes of subpart B.


(k) Eligibility information. The term “eligibility information” means any information that would be a consumer
report if the exclusions from the definition of "consumer report" in section 603(d)(2)(A) of the FCRA did not apply. Examples of the type of information that would fall within the definition of eligibility information include an affiliate's own transaction or experience information, such as information about a consumer's account history with that affiliate, and other information, such as information from credit bureau reports or applications. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(l) FCRA. The term "FCRA" means the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(m) Financial product or service. The term "financial product or service" means any product or service that a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant or swap dealer could offer that is subject to the Commission's jurisdiction.


(o) Major swap participant. The term "major swap participant" has the same meaning as in section 1a(33) of the Commodity Exchange Act, 7 U.S.C. 1 et seq., as may be further defined by this title, and includes any person registered as such thereunder.

(p) Person. The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(q) Pre-existing business relationship. The term "pre-existing business relationship" means a relationship between a person, or a person’s licensed agent, and a consumer based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation by this part;

(2) The purchase, rental, or lease by the consumer of a persons' services or a financial transaction (including holding an active account or policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part; or

(3) An inquiry or application by the consumer regarding a financial product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part.

(r) Solicitation—(1) In general. The term "solicitation" means the marketing of a financial product or service initiated by an affiliate to a particular consumer that is—

(i) Based on eligibility information communicated to that covered affiliate by an affiliate that has or previously had the pre-existing business relationship with a consumer as described in this part; and

(ii) Intended to encourage the consumer to purchase or obtain such financial product or service. A solicitation does not include marketing communications that are directed at the general public.

(2) Examples. Examples of what communications constitute solicitations include communications such as a telemarketing solicitation, direct mail, or e-mail, when those communications are directed to a specific consumer based on eligibility information. A solicitation does not include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase financial products and services from the affiliate initiating the communications.

(s) Swap dealer. The term "swap dealer" has the same meaning as in section 1a(49) of the Commodity Exchange Act, 7 U.S.C. 1 et seq., as may be further defined by this title, and includes any person registered as such thereunder.