COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AD49

Amendments to Commodity Pool Operator and Commodity Trading Advisor Regulations Resulting From the Dodd-Frank Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its regulations governing the operations and activities of commodity pool operators (CPOs) and commodity trading advisors (CTAs) in order to have those regulations reflect changes made to the Commodity Exchange Act (CEA) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

DATES: Effective Date: November 5, 2012.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Act. Title VII of the Dodd-Frank Act amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers (SDs) and major swap participants (MSPs); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission’s rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the oversight of the Commission. Among the changes made by the Dodd-Frank Act to the CEA were to include within the CPO definition the operator of a collective investment vehicle that trades swaps, and to include within the CTA definition a person who provides advice concerning swaps.

B. The Proposed Amendments to Part 4

Part 4 of the Commission’s regulations sets forth a comprehensive regulatory framework for the operations and activities of CPOs and CTAs. It includes disclosure, reporting and recordkeeping requirements for registered CPOs and CTAs, registration and compliance exemptions for CPOs and CTAs, and other provisions, including anti-fraud provisions, applicable to CPOs and CTAs, regardless of registration status. To ensure that the Part 4 regulations applied to CPOs and CTAs in the context of these intermediaries’ involvement with swap transactions, on March 3, 2011, the Commission proposed certain amendments to Part 4 [Proposal].

As the Commission explained in the Proposal, because many of the existing Part 4 regulations generally applied to CPOs and CTAs, they would continue to be applicable to CPOs and CTAs with respect to their swap activities without the need for amendment thereto. The Commission noted that in other instances, however, the text of certain existing Part 4 regulations was specific to activities involving futures contracts, commodity options, and off-exchange retail foreign currency ("commodity interests"), and it did not include, refer to or otherwise take account of swap activities. As the Commission stated: “The Proposal [was] intended to clarify and ensure that the requirements governing the operations and activities of CPOs and CTAs continue to apply for these intermediaries in the context of their involvement with swap transactions.” Accordingly, the Commission proposed to amend Regulations 4.7, 4.10, 4.22, 4.23, 4.24, 4.30, 4.33 and 4.34 to include in each of these regulations a reference to swaps or swap activities.

II. Comments on the Proposal

The Commission received two comment letters on the Proposal, each of which supported the Proposal. One of these letters stated that the Proposal “should act to reduce risk and increase its transparency, and promote market integrity by ensuring that all entities are consistently regulated to the extent that their trading and other activities pertain to swaps.” The other letter urged the Commission “to work quickly and diligently on writing these rules and putting them in place as soon as possible.”

III. The Final Regulations

In light of the supportive comments it received, with one exception the Commission is adopting the amendments to the Part 4 regulations it proposed. That exception concerns the proposed amendment to Regulation 4.10(a) that, for the purposes of Part 4, would have expanded the definition of the term “commodity interest” to include “swaps.” This proposal was superseded by a proposed amendment to Regulation 1.3(yy) that, for the purposes of all of the Commission’s regulations, would define the term “commodity interest” to include “swaps.” Accordingly, the Commission is considering the proposed definition of the term “commodity interest” in connection with its consideration of the comment letters it received on its proposed amendment to Regulation 1.3(yy).

A. Adding “Swap” Terms to Part 4

As proposed, the Commission is inserting “swap,” “swap transaction” or a similar term at various regulations throughout Part 4. See the amendments to Regulations 4.23(a)(1), 4.24(g), (h)(1), and (i)(2) for CPOs and Regulations 4.34(g) and 4.34(i)(2) for CTAs. For


2 Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

3 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.

4 See Section 721(a) of the Dodd-Frank Act, which re-organized (and in some cases amended) existing definitions in, and added new definitions to, Section 1a of the CEA. The CPO and CTA definitions, as amended, are codified at CEA sections 1(a)(9) and 1(a)(12), respectively.

5 76 FR 11701.

6 76 FR 11701. Part 4 applies to CPOs with respect to their activities affecting pool participants and to CTAs with respect to their activities affecting clients. Depending on the nature of its activities, a CPO or CTA may also come within the definition

10 The other letter urged the Commission “to work quickly and diligently on writing these rules and putting them in place as soon as possible.”

7 These comments currently are available on the Commission’s Web site.

8 Comment letter from Chris Barnard (Mar. 29, 2011).


10 See 76 FR 33066, 33069–70 (June 7, 2011).
example, Regulation 4.23(a)(1) is being amended to include “swap type and counterparty” in the itemized daily record that a CPO must make and keep with respect to a pool’s commodity interest transactions.

At other Part 4 regulations, the Commission has included as proposed the term “swap dealer” among the persons for whom a CPO or CTA must provide information in its Disclosure Document and for whom a CPO must provide information in a pool’s periodic Account Statement. See the amendments to Regulations 4.22(a)(3), 4.24(j)(1), (j)(3), (l)(1), and (l)(2) for CPOs and Regulations 4.34(j)(1), (j)(3), (k)(1) and (k)(2) for CTAs. For example, Regulations 4.24(j) and 4.34(j) are being amended to include SDs in the group of persons as to which conflicts of interest must be disclosed by CPOs and CTAs.

Similarly, the Commission has included as proposed “a registered swap dealer” among the persons listed in Regulation 4.7(a)(2) that do not have to satisfy a portfolio requirement in order to be a qualified eligible person (QEP), such that a CPO or CTA that has claimed relief under Regulation 4.7 may accept the SD as a pool participant or advisory client without regard to the size of its investment portfolio. As the Commission explained, “this would be consistent with the current treatment of other financial intermediaries registered with the Commission (such as futures commission merchants [FCMs] and retail foreign exchange dealers [RFEDs]) as QEPs under Regulation 4.7(a)(2).” 11

B. Including Books and Records Relating to Swap Transactions within Part 4

The Commission has adopted as proposed amendments to Part 4 that require a CPO or CTA to make and keep certain books and records generated by the swap transactions in which it engages on behalf of not only its pool participants and clients, but also itself. See the amendments to Regulations 4.23(a)(7) and (b)(1) for CPOs and Regulations 4.33(a)(6) and (b)(1) for CTAs. The amendments to Regulations 4.23(a)(7) and 4.33(a)(6) require CPOs and CTAs to retain each acknowledgment of a swap transaction received from an SD. The amendments to Regulations 4.23(b)(1) and 4.33(b)(1) make clear that if a CPO or CTA was a counterparty to a swap transaction, then it would be subject to the swap data recordkeeping and reporting requirements of Part 45 of the Commission’s regulations, as applicable. 12

C. Regulation 4.30

Subject to certain exceptions, Regulation 4.30 provides that no CTA may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor’s name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client.

The Commission proposed to amend Regulation 4.30 by adding to the list of intermediaries then excepted from the foregoing prohibition—i.e., registered FCMs, leveraged transaction merchants and RFEDs—a registered SD in connection with a swap that was not cleared through a derivatives clearing organization. The Commission explained that this amendment to Regulation 4.30 was necessary “[b]ecause swap dealers will generally fall within the statutory definition of CTA, and because a swap dealer engaging in uncleared swap transactions may be accepting funds or other property from its counterparties as variation and initial margin payments.” 13

Subsequently, the Commission amended Regulation 4.6 to provide therein for an exclusion from the definition of the term “commodity trading advisor” for an SD, provided the commodity interest and swap advisory activities of the SD are solely incidental to the conduct of its business as an SD. 14 Because not all SDs may always meet the “solely incidental” proviso, the Commission has determined to amend Regulation 4.30 as proposed, such that any registered SD who is a CTA is not subject to the regulation’s operational prohibition.

D. Deleting Regulation 4.32

The Commission has deleted as proposed Regulation 4.32, which concerned trading by a registered CTA on or subject to the rules of a derivatives transaction execution facility (DTEF) for non-institutional customers. As the Commission explained:

Section 734(a) of the Dodd-Frank Act repeals Section 5a of the CEA, which is the section establishing and providing for the regulation of DTEFs. Accordingly, because subsequent to the effective date of the Dodd-Frank Act Regulation 4.32 will no longer have a statutory basis or purpose, the Proposal would remove and reserve Regulation 4.32. 15

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) 16 requires federal agencies to consider the impact of those rules on small businesses. 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). 17 The proposed amendments to the Part 4 regulations contained herein will affect CPOs and CTAs. The Commission stated in the Proposal that:

With respect to CPOs, the Commission previously has determined that a CPO is a small entity for the purpose of the RFA if it meets the criteria for an exemption from registration under Regulation 4.13(a)(2). Thus, because the Proposal applies to registered CPOs, the RFA is not applicable to it. As for CTAs, the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the particular rule. In this regard, the Commission notes that the Proposal applies to registered CTAs. Moreover, the Proposal would not have a significant economic impact on any CPO or CTA who would be affected thereby, because it would merely bring within the current Part 4 regulatory structure of disclosure, reporting and recordkeeping information with respect to swap activities. It would not impose any additional operative requirements or otherwise direct or conline the activities of CPOs and CTAs. 18

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 amendments to the Part 4 regulations being published today by this Federal Register release will not have a significant economic impact on a substantial number of small entities.

11 76 FR at 11702.

12 See Regulation 45.2, which requires SDs and MSPs to keep full, complete and systematic records, together with all pertinent data and memoranda, of all activities relating to their business with respect to swaps, as prescribed by the Commission. (Non-SD and non-MSP counterparties subject to the Commission’s jurisdiction have a similar requirement, but only with respect to each swap to which they are a counterparty.)

13 76 FR at 11702. In this regard, the Commission has proposed regulations addressing the circumstances in which non-bank SDs may be required or permitted to accept margin payments in uncleared swap transactions. See 76 FR 23732 (Apr. 28, 2011). Accordingly, this amendment to Regulation 4.30 should not be interpreted to impose or authorize any such margin requirements.


15 76 FR at 11702.

16 5 U.S.C. 601 et seq.

17 By its terms, the RFA does not apply to “individuals.” See 48 FR 14933, n. 115 (Apr. 6, 1983).


19 76 FR at 11703.
B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) 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 amendments to the Part 4 regulations will not require any new collection of information from any entity that is subject to them. Additionally, 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 for purposes of the PRA, the Chairman, on behalf of the Commission, certifies that the amendments to the Part 4 regulations being published today by this Federal Register release will not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Prior to the passage of the Dodd-Frank Act, the Part 4 regulations did not apply to swap-related activities. This pre-Dodd-Frank Act construct provides a useful reference point from which to compare the costs and benefits of the proposed regulations to the alternative where the Commission would not be taking any action to incorporate swap-related information into Part 4.

As a result of the Dodd-Frank Act including swap-related activities among the activities on which the CPO and CTA definitions are based, CPOs and CTAs who engage in swap-related activities are now subject to Part 4. In various places, however, the wording of particular provisions of Part 4 was incomplete or inconsistent in the context of CPOs and CTAs involved with swap transactions; there is no regulatory need for the prohibition in Regulation 4.30 against directly accepting margin payments to apply to an SD; and the subject matter of Regulation 4.32 (trading on DTEFs) was rendered moot by the Dodd-Frank Act.

Under such a scenario, the costs to the public of inaction would be, in qualitative terms, failure to receive Part 4 disclosure, reporting and recordkeeping protections from their CPOs and CTAs with regard to their swap activities, an unnecessary burden on SDs, and regulatory text that is obsolete. The costs of these amendments, if any, will be minimal—limited to the costs associated with including information related to swaps in the Disclosure Documents, Account Statements and books and records already required of CPOs and CTAs under existing Part 4 regulations.

Moreover, this information should be readily available to CPOs and CTAs. The costs cannot be feasibly quantified or estimated, because they will vary according to each registrant’s internal processes and registration category. In contrast, the amendments will yield significant if unquantifiable benefit to the public, relative to inaction, by clarifying the application of Part 4 and the obligations of CPOs and CTAs to their participants and clients, respectively.

In the CEA, Congress provided the Commission with the authority to promulgate regulations that, among other things, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. In accordance with Section 15(a) of the CEA, it is in this post-Dodd-Frank Act environment that the Commission considers the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order.

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 futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

In light of the provisions of the Dodd-Frank Act that expand the “commodity pool operator” and “commodity trading advisor” definitions to include swap-related activities, these amendments incorporate into the existing Part 4 framework regulations to take account of the swap-related activities of CPOs and CTAs. Specifically, the amendments subject CPOs and CTAs when involved with swap transactions to the same Part 4 requirements that apply when they are involved with commodity interest transactions, to the extent regulations in place at the time of the enactment of the Dodd-Frank Act did not clearly do so. The revision to Regulation 4.30 excepts SDs from the prohibition on accepting margin to treat them equivalently with FCMs and RFEDs. In addition, these amendments delete Regulation 4.32, pertaining to trading by registered CTAs on DTEFs, given the repeal by the Dodd-Frank Act of CEA Section 5a, which authorized such trading facilities.

In the Proposal the Commission sought public comment on the costs and benefits of its contemplated amendments to Part 4. The Commission did not receive any comments in response to this request.

Section 15(a) Factors

(1) Protection of market participants and the public.

The Commission believes the amendments to the Part 4 regulations will provide protection to market participants and the public by requiring CPOs and CTAs to include information on swap intermediaries and activities in the disclosure, reporting and recordkeeping framework under Part 4. For example, Regulation 4.24(j) has provided protections to commodity pool participants by requiring their CPO to disclose any actual or potential conflict of interest with any FCm with whom their pool was required to maintain its account. The amendment to Regulation 4.24(j) the Commission has adopted will provide similar protections, by requiring the CPO to disclose any actual or potential conflict of interest with any SD with whom their pool maintains its swap positions.

(2) Efficiency, competitiveness, and financial integrity of the futures markets.

The Commission does not expect the amendments to Part 4 to have an impact on the efficiency, competitiveness and financial integrity of the commodity interest markets.

(3) Price Discovery.

The Commission does not expect the amendments to Part 4 to have an impact on the market’s price discovery functions.

(4) Sound risk management practices.

The Commission does not expect the amendments to Part 4 to have an impact on risk management practices by CPOs, CTAs and other Commission registrants. However, the requirement that CPOs and CTAs account for SD, MSP and swap activities when complying with their disclosure, reporting and recordkeeping requirements under Part 4 will benefit prospective and actual pool participants and clients by ensuring that these participants and clients are afforded the same customer protections as participants and clients.

22 76 FR 11701, 11703.
in all other commodity pools and managed account programs.
(5) Other public interest considerations.

The Commission has not identified any other public interest considerations regarding the costs and benefits of the amendments to Part 4.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Customer protection, Reporting and recordkeeping requirements, Swaps.

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

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

§ 4.23 Recordkeeping.

(a) * * *

(1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, swap type and counterparty, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

(b) * * *

(1) * * *

(7) Copies of each confirmation or acknowledgment of a commodity interest transaction of the pool, and each purchase and sale statement and each monthly statement for the pool received from a futures commission merchant, retail foreign exchange dealer or swap dealer.

§ 4.24 General disclosures required.

(g) Principal risk factors. A discussion of the principal risk factors of participation in the offered pool. This discussion must include, without limitation, risks relating to volatility, leverage, liquidity, counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed and investment activity (including retail forex and swap transactions) expected to be engaged in by the offered pool.

(h) * * *

(1) * * *

(i) The approximate percentage of the pool’s assets that will be used to trade commodity interests, securities and other types of interests, categorized by type of commodity or market sector, type of swap, type of security (debt, equity, preferred equity), whether traded or listed on a regulated exchange market, maturity ranges and investment rating, as applicable;

* * * * *

(j) * * *

(1) * * *

(2) * * *

(xii) Any costs or fees included in the spread between bid and asked prices for retail forex or, if known, swap transactions; and

* * * * *

(j) * * *

(1) * * *

(vi) Any other person providing services to the pool, soliciting participants for the pool, acting as a counterparty to the pool’s retail forex or swap transactions, or acting as a swap dealer with respect to the pool.

* * * * *

(3) Included in the description of such conflicts must be any arrangement whereby a person may benefit, directly or indirectly, from the maintenance of the pool’s account with the futures commission merchant and/or retail foreign exchange dealer and/or from the maintenance of the pool’s swap positions with a swap dealer, or from the introduction of the pool’s account to a futures commission merchant and/or retail foreign exchange dealer and/or swap dealer by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or funds or other investments.

* * * * *

(l) * * *

(1) * * *

(1) * * *

(iii) The pool’s futures commission merchants and/or retail foreign exchange dealers and/or swap dealers and its introducing brokers, if any.

(2) With respect to a futures commission merchant and/or retail

§ 4.22 Reporting to pool participants.

(a) * * *

(3) The Account Statement must also disclose any material business dealings between the pool, the pool’s operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that have previously not been disclosed in the pool’s Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

* * * * *

§ 4.22 Reporting to pool participants.

(a) * * *

(3) The Account Statement must also disclose any material business dealings between the pool, the pool’s operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that have previously not been disclosed in the pool’s Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

* * * * *

§ 4.22 Reporting to pool participants.

(a) * * *

(3) The Account Statement must also disclose any material business dealings between the pool, the pool’s operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that have previously not been disclosed in the pool’s Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

* * * * *

§ 4.22 Reporting to pool participants.

(a) * * *

(3) The Account Statement must also disclose any material business dealings between the pool, the pool’s operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that have previously not been disclosed in the pool’s Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

* * * * *

§ 4.22 Reporting to pool participants.

(a) * * *

(3) The Account Statement must also disclose any material business dealings between the pool, the pool’s operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that have previously not been disclosed in the pool’s Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

* * * * *

§ 4.22 Reporting to pool participants.

(a) * * *

(3) The Account Statement must also disclose any material business dealings between the pool, the pool’s operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that have previously not been disclosed in the pool’s Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

* * * * *
foreign exchange dealer or an introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s statement received from a futures or retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

(ii) With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

2. With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

3. With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

4. Such information will enhance customer understanding of the nature of the client’s swap positions with a swap dealer or from the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) * * *

1. With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

2. With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

3. With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

4. Such information will enhance customer understanding of the nature of the client’s swap positions with a swap dealer or from the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) * * *

(1) * * *

(i) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

(ii) With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action would be required to be disclosed in the notes to the futures commission merchant’s, retail foreign exchange dealer’s, swap dealer’s or introducing broker’s financial statements prepared pursuant to generally accepted accounting principles;

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

4. Such information will enhance customer understanding of the nature of the client’s swap positions with a swap dealer or from the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) * * *

(1) * * *

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

4. Such information will enhance customer understanding of the nature of the client’s swap positions with a swap dealer or from the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) * * *

(1) * * *

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.
Costs and Benefits: This rulemaking is not economically significant as that term is defined in Executive Order 12866 (Sept. 30, 1993).

Background


Section 11 of the Leahy-Smith America Invents Act provides for a surcharge of fifteen percent, rounded by standard arithmetic rules, on all fees charged or authorized by 35 U.S.C. 41(a), (b), and (d)(1), as well as by 35 U.S.C. 132(b). Section 11 of the Act provides that this fifteen percent surcharge is effective ten days after the date of enactment (i.e., September 26, 2011). Section 11 also provides that this fifteen percent surcharge shall terminate, with respect to a fee to which the surcharge applies, on the effective date of the setting or adjustment of that fee pursuant to the exercise of the authority under section 10 of the Act for the first time with respect to that fee. Section 10 fee-setting will be implemented in a future separate rulemaking.

This CPI increase will be implemented on October 1, 2012. This interim increase in fees is necessary to allow the USPTO to meet its strategic goals within the time frame outlined in the FY 2013 President’s Budget. The interim fee increase is a bridge to provide resources until the USPTO exercises its fee-setting authority and develops a new fee structure that will provide sufficient financial resources in the long term. An adequately funded USPTO will optimize the administration of the U.S. intellectual property system, and thereby move innovation to the marketplace more quickly, creating and sustaining U.S. jobs and enhancing the health and living standards of Americans.

Fee Adjustment Level: The patent statutory fees established by 35 U.S.C. 41(a) and (b) are adjusted to reflect the most recent fluctuations occurring during the twelve-month period prior to publication of the final rule implementing this CPI adjustment, as measured by the Consumer Price Index for All Urban Consumers (CPI–U). The Office of Management and Budget (OMB) has advised that in calculating fee adjustments the USPTO should use CPI–U data as determined by the Secretary of Labor, which is found at