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All comments received are a part of the public record and will generally be posted to <http://www.Regulations.gov> without change. All Personal Identifying Information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information, as such information may become part of the public record.

The FTZ Board will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only. All comments to *Regulations.gov* must be submitted into Docket Number ITA–2010–0012, and comments should refer to RIN 0625–AA81. The public record concerning these regulations will be maintained in the Office of the Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230. Written public comments will be available at the facility in accordance with 15 CFR part 4 and may also be available electronically over the internet via <http://www.trade.gov/ftz> or <http://www.Regulations.gov>. Questions may be directed to the Foreign-Trade Zones Board staff by calling (202) 482–2862 or via e-mail to ftz@trade.gov.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray, Executive Secretary, Foreign Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230, (202) 482–2862 or Matthew Walden, Senior Attorney, Office of Chief Counsel for Import Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4610, Washington, DC 20230, (202) 482–2963.

Dated: March 3, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AD50

Registration of Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) hereby proposes regulations to further implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding registration of intermediaries. Specifically, the Commission proposes certain conforming amendments to the Commission's regulations regarding the registration of intermediaries, consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act; and other modernizing and technical amendments to the regulations.

DATES: Comments must be received on or before May 9, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AD50 and Part 3, by any of the following methods:

- Agency Web site, <http://www.cftc.gov>, via its Comments Online process at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* same as mail above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. 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 <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from

disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9.¹

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 <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 and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Director, Division of Clearing and Intermediary Oversight, (202) 418–5465, achapin@cftc.gov; or Claire Noakes, Attorney Advisor, Division of Clearing and Intermediary Oversight, (202) 418–5444, cnoakes@cftc.gov; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.² Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)³ to establish a comprehensive new regulatory framework 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 rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight. The regulations in this proposal concern conforming, modernizing and technical

¹ Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010), as amended by 75 FR 55409, Sep. 23, 2010, and may be accessed on the Commission's Web site.

² See Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at http://www.cftc.gov/ucm/groups/public/swaps/documents/file/hr4173_enrolledbill.pdf.

³ 7 U.S.C. 1 *et seq.*

amendments to part 3 governing the registration of intermediaries.

II. Proposed Regulations

The Commission's existing registration process for futures, commodity options and retail foreign exchange intermediaries, their associated persons (APs), and floor traders and floor brokers is set forth in part 3. Currently, part 3 does not address SDs and MSPs, nor does it reference a swap execution facility (SEF).⁴ The Commission recently published two other notices of proposed rulemaking that would apply certain provisions of part 3 to SDs and MSPs.⁵ This proposal would amend further part 3 to conform the regulations regarding registration by incorporating references to SDs, MSPs and SEFs where appropriate. The Commission expects to harmonize any distinctions between this proposal and the other rulemakings in the order that they become final. Therefore, this proposal does not contain the changes to part 3 proposed elsewhere; it is intended to work in conjunction with these other proposed rulemakings.

A. Conforming Amendments

Some of the proposed amendments involve substantive changes to existing regulations because of the particular attributes or characteristics of SDs, MSPs and SEFs. Other proposed amendments to part 3 consist entirely of adding references, where appropriate, to SDs, MSPs and SEFs in existing regulations, based on the fact that the Commission has not decided to issue regulations that impose a registration requirement on floor brokers and floor traders that solely engage in swaps activity. As a result, SEFs were not added alongside the term designated contract market if the provision was only addressing registration activities of floor brokers and floor traders. SDs and MSPs were not added if the provision was only addressing registration activities of APs, because at this time the Commission has not decided to issue regulations requiring registration of APs of SDs and MSPs.⁶

Specific section-by-section proposed revisions follow.

1. Section 3.1—Definitions

Current § 3.1(a) sets forth the definition of a principal, and § 3.1(a)(3) carves out from the definition of principal certain persons that have made capital contributions in the form of subordinated debt to a registrant, including unaffiliated banks operating in the U.S. and U.S. branches of foreign banks. The Commission is proposing to clarify the carve-out by referencing terms defined elsewhere in federal regulations. More specifically, the proposal would tie the carve-out to the definitions of "foreign bank" and "office of a foreign bank" currently used by the Board of Governors of the Federal Reserve System under regulation K⁷ for foreign banking organizations.

Currently, any foreign bank that had made capital contributions in the form of subordinated debt would be included within the definition of principal.⁸ In response to the likelihood that foreign-domiciled persons with capital contributions from foreign banks might register as SDs, the Commission is proposing to expand the carve-out. The proposed expansion would cover any foreign bank itself that currently operates an office licensed in the U.S. In so doing, the Commission would be relying on the approval process of the office by the Board of Governors of the Federal Reserve System as a proxy for discerning whether the foreign bank itself is otherwise regulated. The Commission specifically seeks comments on whether this provision is warranted to ensure uniform listing of principals by domestic and foreign-domiciled registrants, and whether the expansion would ensure that the list of principals remains a meaningful reflection of the persons who actually exercise control over the registrant's regulated activities.

2. Section 3.10—Registration of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants. Section 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

Current § 3.10(c) generally sets forth exemptions from registration for certain persons. The Commission is proposing to add an exemption from registration in new paragraph (c)(5) to clarify that an individual employed by either an SD or a MSP and acting as its AP is not required separately to register as an SD or MSP, respectively, solely arising out of their activities as an AP. The Commission specifically seeks comment as to whether this exemption is necessary to clarify the registration responsibilities of employees, in light of the current absence of a registration requirement as an AP of an SD or a MSP, and in light of the proposed definition requiring persons who engage in certain activities to register as an SD or MSP.⁹

The Commission also is proposing to amend § 3.12(h)(1)(i) to provide that a person is not required to register as an AP in any capacity if he or she is registered in one of the other enumerated categories, including an SD or MSP. The Commission specifically seeks comment as to whether this exemption is necessary, in light of the improbability that an individual, rather than an entity, would register as an SD or MSP.

Section 3.10(c)(2) and (3) also currently provide exemptions from registration as a futures commission merchant for foreign brokers and other foreign intermediaries conducting activities in commodity interest transactions on designated contract markets solely on behalf of customers located outside the U.S. The Commission is proposing to expand the exemption to commodity interest transactions made on or subject to the rules of an SEF. The Commission is proposing this expansion to create uniformity in treatment of commodity interest transactions that do not involve a U.S. customer, regardless of whether the transaction is made on a designated contract market or an SEF. Additionally, the Commission seeks comment as to whether it should expand the existing

⁴ Section 1(a)(50) of the CEA generally provides that a SEF is a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system.

⁵ 75 FR 70881, Nov. 19, 2010; 75 FR 71379, Nov. 23, 2010.

⁶ See 75 FR at 71380, Nov. 23, 2010.

⁷ See generally 12 CFR 211.

⁸ In the Commission's initial proposal of this exemption, the Commission was concerned with whether the bank was "otherwise regulated," but did not attempt to determine whether any foreign bank qualified as such. See 56 FR 37026, 37031, Aug. 2, 1991.

⁹ See 75 FR 80173, Dec. 21, 2010.

exemption from registration to foreign brokers and other foreign intermediaries that execute a bilateral swap transaction and voluntarily clear it on a derivatives clearing organization on an omnibus basis. Further, the Commission seeks comment as to whether such an exemption should distinguish between bilateral swap transactions that occur within the U.S., or those that occur abroad.

3. Derivatives Transaction Execution Facilities

The Dodd-Frank Act abolished derivatives transaction execution facilities as a market category. Additionally, no derivatives transaction execution facility has ever registered with the Commission. Therefore, that term is proposed to be deleted from §§ 3.2(c), 3.2(c)(2), 3.10(a)(3)(i)(A), 3.10(c)(2)(i), 3.10(c)(3)(i), 3.10(c)(4)(ii) and (iv), 3.11(a)(2) and (3), 3.11(b), 3.31(d), 3.40(a)(2)(iv), 3.42(a)(6), and 3.46(a)(8).

B. Modernization and Technical Amendments

The Commission proposes to make certain modernization and technical amendments to part 3. These are discussed below.

1. Section 3.1—Definitions

Section 3.1(a)(2) defines a principal to include persons who exceed a threshold for equity ownership. As a technical matter, the Commission is proposing to harmonize the references to outstanding classes of securities in § 3.1(a)(2)(i) and (ii) to refer to “outstanding shares of any class of equity securities, other than non-voting securities” throughout. This term should address any existing ambiguity related to calculations involving authorized but unissued securities, or debt securities. Also, the Commission is proposing to move the concept of indirect owners found in the definition of beneficial ownership in § 3.1(d) to § 3.1(a)(4) to serve as a backstop to the requirement to list indirect owners in § 3.1(a)(2).

2. Section 3.31—Deficiencies, Inaccuracies, and Changes To Be Reported. Section 3.33—Withdrawal from Registration

Current § 3.31 sets forth procedural requirements for a registrant to update and/or correct information previously provided to the Commission and the National Futures Association (NFA). Among other goals, the purpose of the registration process is to ensure that principals are subject to proper fitness checks prior to the registrant engaging in regulated activities. Historically, the

Commission required re-registration upon a change in a registrant’s name, a change in its form of organization,¹⁰ or a change in its control, with limited exemptions.¹¹ In practice, however, re-registering creates a new NFA identification number, which disassociates past disciplinary information connected to the previous NFA identification number with the re-registered entity’s new NFA identification number. A member of the public would need to take additional steps to uncover the disciplinary information associated with the previous entity’s NFA identification number by researching whether any principals of the new entity were also principals of the old entity. Also, re-registration could disrupt the continuity of business of a registrant if a background check is not completed before a principal is added.

The Commission recognizes that the rules no longer explicitly require re-registration in response to changes in a registrant’s name, its form of organization, or its control. Instead, NFA determines whether a firm must re-register, subject to certain safe-harbors from re-registration in § 3.31(a)(2) and (3). For example, current § 3.31(a)(2) permits firms to avoid re-registration after a change to the form of the organization if the successor organization consents to be liable for all obligations of the predecessor organization, and (a)(3) permits firms to avoid re-registration, despite the addition of a new principal. Otherwise, these exemptions do not address what happens when a firm changes both its form of organization and some of its principals, such as during a merger.

The Commission seeks to improve the transparency and predictability of the re-registration requirements in expectation of an influx of new registrants. Therefore, the Commission is proposing to amend § 3.31(a) to explicitly address additional scenarios. Proposed § 3.31(a)(2) restates an existing requirement to re-register if a sole proprietorship is involved, in recognition of the unique attributes of the sole proprietor name type under NFA’s online registration system. Proposed § 3.31(a)(3) requires re-registration in the event of a change in

name or form of organization, but preserves the existing safe harbor if there is no change in principal and the registrant wishes to consent to liability for its predecessor organization. Proposed § 3.31(a)(4) preserves the existing safe harbor from re-registration for additions of a new principal. Proposed § 3.31(a)(5), however, requires re-registration if a registrant changes its legal name or its form of the organization and adds a principal.

Currently, a registration is tied to an entity’s legal name that is registered with a state, and that denotes information about its form of organization. The Commission believes it is appropriate to connect the NFA identification number to that name and form of organization. It is unavoidable that members of the public will need to take an additional step to acquire information about a previous registrant by researching shared principals, because an entity that is a bad actor could still voluntarily withdraw its registration to obtain a new NFA identification number and disassociate itself from past disciplinary actions. The Commission specifically requests comment on whether the additional transparency under the new provisions of § 3.31 is beneficial and necessary to fulfill the Commission’s mandate to protect customers, and whether the existing safe harbors from re-registration should be maintained.

Also, the Commission is proposing to amend § 3.33(a) to compel a registrant to request a withdrawal of its registration at the same time it files articles of dissolution or a certificate of cancellation. For example, if a partnership decides to wind-up its affairs and cancel its partnership statement with the state, it must request withdrawal from registration at least contemporaneously with, or on a voluntary basis prior to, it canceling its partnership statement.

3. Consolidation of Existing Regulations

The Commission is also proposing that several provisions of part 3 should be consolidated to streamline the regulations. None of these proposals create new regulatory requirements. First, the Commission proposes to move the delegation provision found in § 3.12(g) into § 3.75, “Delegation and reservation of authority.” Second, the Commission is proposing to amend § 3.11 to add a new paragraph (c) to replace the existing exemption from registration as a floor trader for registered floor brokers that was previously found in § 3.4(a). Similarly, proposed § 3.21, “Exemption from fingerprinting requirement in certain

¹⁰ In 1979, § 1.15 stated, “a new registration shall be required in the event of a change: (a) In the name of the registrant; (b) In the form of organization of the registrant * * *”

¹¹ See, e.g., 57 FR 23136, 23142, Jun. 2, 1992, requiring written certifications that control remains the same after a reorganization in order to avoid re-registration, or requiring a corporate resolution prohibiting a new director from exercising control until NFA could complete its background check in order to avoid re-registration.

cases,” contains an exemption from submitting fingerprint cards for persons who have a current form 8–R on file, which would replace the same exemption found in §§ 3.31(a)(3) and 3.44(a)(5). In both cases, the regulations permitted a principal that was moving between registrants to dispense with the fingerprint card filing requirement. The proposed rules consolidate this exemption with the other exemptions in § 3.21.

4. Registration Forms

The Commission also is proposing to amend certain provisions to update several references to the forms used during the registration process. For example, certain provisions in part 3 refer to a registrant’s use of the form 3–R. However, under NFA’s online registration system, a registrant cannot presently fill out a form 3–R, either electronically or on paper. Instead, a registrant can update its existing form 7–R or form 8–R, and a record of those changes will be automatically created by NFA and designated as the registrant’s completed form 3–R. For clarity, the Commission is proposing to reference the distinction between actually filing out a form and creating a record of changes to another form in proposed §§ 3.11(b), 3.31(a)(1), 3.31(b), and 3.31(c)(1). Elsewhere, §§ 3.42(a)(8) and 3.46(a)(10) refer to a numerical list of items on forms 7–R and 8–R, but these forms no longer contain numbers associated with the particular questions. The Commission therefore is proposing to amend these regulations to instead reference the failure to disclose relevant disciplinary history information, or the failure to disclose an event leading to a required disclosure. These proposals do not create any new regulatory requirement, but merely clarify existing obligations.

C. Corrections

As published, the regulations contain vestigial definitions, outdated cross-references to other regulations, and typographical errors that are in need of clarification or updating. The Commission is proposing to amend the following: §§ 3.1(e), 3.11(b), 3.10(c)(4)(iii), 3.12(b), 3.12(c), 3.12(h)(1)(ii), 3.13(d)(2), 3.21(a)(1–2), 3.21(b)(1)–(2), 3.21(c)(4)(iii), 3.22(b), 3.30(b), 3.42(a), 3.44(a)(5), 3.46(a), and 3.46(a)(6) to address such errors.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) was adopted to address the concerns that government regulations

may have a significant and/or disproportionate effect on small businesses. To mitigate this risk, the RFA requires agencies to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.¹² These analyses must describe the impact of the proposed rule on small entities, including a statement of the objectives and the legal bases for the rulemaking; an estimate of the number of small entities to be affected; identification of Federal rules that may duplicate, overlap, or conflict with the proposed rules; and a description of any significant alternatives to the proposed rule that would minimize any significant impacts on small entities.¹³

The proposed rules will amend existing rules in part 3 regarding the registration of intermediaries consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act. The proposed rules also will make other technical and modernizing amendments to part 3.

The rules proposed by the Commission shall affect only FCMs, introducing brokers, commodity trading advisors, commodity pool operators, SDs and MSPs, and the rules will impose no new significant obligations on any of these entities. Therefore, the Commission has determined that the proposed rules will not create a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.¹⁴ The proposed rules will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the PRA. The Commission invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

¹² 5 U.S.C. 601 *et seq.*

¹³ 5 U.S.C. 603, 604.

¹⁴ 44 U.S.C. 3501 *et seq.*

C. Cost-Benefit Analysis

Section 15(a) of the CEA¹⁵ requires the Commission to consider the costs and benefits of its actions before issuing new rules under the Act. By its terms, it does not require the Commission to quantify the costs and benefits of new rules or to determine whether the benefits of the proposed rules outweigh their costs; it requires the Commission to “consider” the cost and benefits of its actions. Section 15(a) of the CEA further specifies that the costs and benefits of the proposed rules 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 the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rules would amend existing rules in part 3 regarding the registration of intermediaries to ensure that the Commission’s current rules are consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act. The proposed rules also would make other technical and modernizing amendments to part 3. As these rules impose no new significant obligations, the Commission does not anticipate that they will result in either costs or benefits in light of the five areas of concern enumerated in § 15(a) of the CEA. The substantive proposed rulemakings with which this rulemaking is associated have addressed the costs and benefits of the proposals, as required by § 15(a) of the CEA.

The Commission invites public comment on its cost-benefit considerations. Commenters also are invited to submit any data or other information that they may have quantifying or qualifying the costs.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

¹⁵ 7 U.S.C. 19(a).

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 3 as follows:

PART 3—REGISTRATION

Authority and Issuance

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

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b-1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

2. Amend § 3.1 by revising paragraph (a) introductory text, (a)(2), and (a)(3), adding paragraph (a)(4), and removing and reserving paragraphs (d) and (e) to read as follows:

§ 3.1 Definitions.

(a) *Principal.* *Principal* means, with respect to an entity that is an applicant for registration, a registrant or a person required to be registered under the Act or these regulations:

* * * * *

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities, is entitled to vote or has the power to sell or direct the sale of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities, or is entitled to receive ten percent or more of the profits of the entity; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities; or

(3) Any person that has contributed ten percent or more of the capital of the entity, provided, however, that if such capital contribution consists of subordinated debt contributed by either

(i) An unaffiliated bank insured by the Federal Deposit Insurance Corporation,

(ii) An unaffiliated “foreign bank,” as defined in 12 CFR 211.21(n) that currently operates an “office of a foreign bank,” as defined in 12 CFR 211.21(t), which is licensed under 12 CFR 211.24(a),

(iii) Such unaffiliated office of a foreign bank that is licensed, or

(iv) An insurance company subject to regulation by any State, such bank, foreign bank, office of a foreign bank, or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(4) Any individual who, directly or indirectly, creates or uses a trust, proxy,

power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of direct or indirect ownership of an equity security of the entity, other than a non-voting security, or preventing the vesting of such ownership, or of avoiding making a contribution of ten percent or more of the capital of the entity, as part of a plan or scheme to evade being deemed a principal of the entity, shall be deemed to be a principal of the entity.

* * * * *

(d) [Reserved.]

(e) [Reserved.]

* * * * *

3. Amend § 3.2 by revising paragraphs (c) introductory text and (c)(2) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

* * * * *

(c) The National Futures Association shall notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, and each designated contract market that has granted the applicant trading privileges in the case of an applicant for registration as a floor broker or floor trader, if registration has been granted under the Act.

* * * * *

(2) If an applicant for registration as a floor broker or floor trader receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the designated contract market that has granted the applicant trading privileges that only a temporary license has been granted.

* * * * *

4. Amend § 3.10 by revising paragraphs (a)(3)(i)(A), (c)(2)(i), (c)(3)(i), (c)(4)(ii), (c)(4)(iii), and (c)(3)(iv) and add paragraph (c)(5) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) * * *

(3) * * *

(i) * * *

(A) The broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market, to security futures products as defined in section 1a(44) of the Act;

* * * * *

(c) * * *

(2)(i) A foreign broker, as defined in § 1.3(xx) of this chapter, is not required to register as a futures commission merchant if it submits any commodity interest transactions executed on or subject to the rules of designated contract market or swap execution facility for clearing on an omnibus basis through a futures commission merchant registered in accordance with section 4d of the Act.

* * * * *

(3)(i) A person located outside the United States, its territories or possessions engaged in the activity of: An introducing broker, as defined in § 1.3(mm) of this chapter; a commodity trading advisor, as defined in § 1.3(bb) of this chapter; or a commodity pool operator, as defined in § 1.3(cc) of this chapter, in connection with any commodity interest transaction made on or subject to the rules of any designated contract market or swap execution facility only on behalf of persons located outside the United States, its territories or possessions, is not required to register in such capacity provided that any such commodity interest transaction executed on or subject to the rules of designated contract market or swap execution facility is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

* * * * *

(4) * * *

(ii) Such a person introduces, on a fully-disclosed basis in accordance with § 1.57 of this chapter, any institutional customer, as defined in § 1.3(g) of this chapter, to a registered futures commission merchant for the purpose of trading on a designated contract market;

(iii) Such person’s affiliated futures commission merchant has filed with the National Futures Association (*Attn:* Vice President, Compliance) an acknowledgement that the affiliated futures commission merchant will be jointly and severally liable for any violations of the Act or the Commission’s regulations committed by such person in connection with those introducing activities, whether or not the affiliated futures commission merchant submits for clearing any trades resulting from those introducing activities; and

(iv) Such person does not solicit any person located in the United States, its territories or possessions for trading on a designated contract market, nor does such person handle the customer funds of any person located in the United States, its territories or possessions for

the purpose of trading on any designated contract market.

* * * * *

(5) An associated person of a swap dealer or an associated person of a major swap participant, as defined in 1a(4) of the Act, is not required to register as a swap dealer or major swap participant, respectively, solely as a consequence of being an associated person of a swap dealer, or an associated person of a major swap participant.

* * * * *

5. Amend § 3.11 by revising paragraphs (a)(2), (a)(3) and (b) and adding paragraph (c) to read as follows:

§ 3.11 Registration of floor brokers and floor traders.

(a) * * *

(2) An applicant for registration as a floor broker or floor trader will not be registered or issued a temporary license as a floor broker or floor trader unless the applicant has been granted trading privileges by a board of trade designated as a contract market by the Commission.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will notify the applicant and any contract market that has granted the applicant trading privileges that the applicant's registration or temporary license as a floor broker or floor trader is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraph (a) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased: Provided, that if a floor broker or floor trader whose trading privileges on all contract markets have ceased for reasons unrelated to any Commission action or any contract market disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market where he held such privileges within the preceding sixty days, such registration as a floor broker or floor trader, respectively, shall be deemed to continue and no new Form 8-R or Form 3-R record of a change to Form 8-R need be filed solely on the basis of the resumption of trading privileges. A floor broker or floor trader is prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant

under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. Each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must provide notice in accordance with § 3.31(d) after such person's trading privileges on such contract market have ceased.

(c) *Exceptions.* (1) A registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

(2) [Reserved]

6. Amend § 3.12 by revising paragraphs (b), (c), (g) and (h) 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.

* * * * *

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), or (i) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of his or his sponsor's registration. Each of the registrant's sponsors must file a notice in accordance with § 3.31(c) reporting the termination of the association of the associated person.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), and (i) of this section, application for registration as an associated person in any capacity must be on Form 8-R, completed and filed in accordance with the instructions thereto.

* * * * *

(g) *Petitions for exemption.* Any person adversely affected by the operation of this section may file a petition with the Secretary of the Commission, which petition must set forth with particularity, the reasons why that person believes that an applicant should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest and the

purposes of the provision from which exemption is sought. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, floor broker, or as an introducing broker;

(ii) Engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the Financial Industry Regulatory Authority as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission;

* * * * *

7. Amend § 3.13 by revising paragraph (d)(2) to read as follows:

§ 3.13 Registration of agricultural trade option merchants and their associated persons.

* * * * *

(d) * * *

(2) Applicants for registration as an associated person of an agricultural trade option merchant must meet the following conditions. Such persons must:

* * * * *

8. Amend § 3.21 by revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (b)(3), and (c)(4)(iii), and add paragraph (a)(3) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) * * *

(1) A legible, accurate and complete photocopy of a fingerprint card that has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days

prior to the filing with the National Futures Association of the photocopy;

(2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days, provided that the provisions of paragraph (a)(2) of this section shall not be applicable to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration; or

(3) A statement that such person has a current Form 8-R on file with the Commission or the National Futures Association.

(b) * * *

(1) With respect to the fingerprints of an associated person: An officer, if the sponsor is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship;

(2) With respect to fingerprints of a floor broker or floor trader: The applicant for registration; or

(3) With respect to the fingerprints of a principal: An officer, if the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal will be affiliated is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship.

(c) * * *

(4) * * *

(iii) The internal controls used to ensure that the outside director for whom exemption under paragraph (c) of this section is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

* * * * *

9. Amend § 3.22 by revising paragraph (b) to read as follows:

§ 3.22 Supplemental filings.

* * * * *

(b) That the person, or any individual who, based upon his or her relationship with that person is required to file a Form 8-R in accordance with the requirements of this part, as applicable, must, within such period of time as the Commission or the National Futures Association may specify, complete and file with the Commission or the National Futures Association a current Form 7-R, or if appropriate, a Form 8-R, in accordance with the instructions thereto.

* * * * *

10. Amend § 3.30 by revising paragraph (b) to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

* * * * *

(b) Each registrant, while registered and for two years after termination of registration, and each principal, while affiliated and for two years after termination of affiliation, must notify in writing the National Futures Association of any change of the address on the application for registration, biographical supplement, or other address filed with the National Futures Association for the purpose of receiving communications from the Commission or the National Futures Association. Failure to file a required response to any communication sent to the latest such address filed with the National Futures Association that is caused by a failure to notify in writing the National Futures Association of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any National Futures Association or Commission proceeding, including a reparation proceeding brought under part 12 of this chapter.

11. Amend § 3.31 by revising paragraphs (a), (b), (c)(1) introductory text and (d) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes to be reported.

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Form 8-R that no longer renders accurate and current the information contained therein, with the exception of any change that requires withdrawal from registration under § 3.33. Each such correction shall be prepared and filed in accordance with the instructions thereto to create a Form 3-R record of such change.

(2) Where the deficiency or inaccuracy is created by a change in the "form of organization" field on Form 7-R from or to a sole proprietorship, the registrant must request withdrawal from registration in accordance with § 3.33.

(3) Where the deficiency or inaccuracy is created by a change in the "firm name" field, if a non-natural person, or the "form of organization" field on Form 7-R, the registrant must

request withdrawal from registration in accordance with § 3.33; provided, however, that if there is no addition of a new principal, the registrant may instead update its Form 7-R to create a Form 3-R record of change, which is deemed in such circumstance to include a consent that the new legal entity shall be liable for all obligations of the pre-existing organization under the Act, and the rules, regulations, or orders that have been promulgated thereunder.

(4) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), and there is no change in firm name or form of organization:

(i) If the new principal is not a natural person, the registrant shall update such Form 7-R to create a Form 3-R record of change.

(ii) If the new principal is a natural person, the registrant shall file a Form 8-R, completed in accordance with the instructions thereto and executed by such person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto.

(5) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), and there is a change in the "firm name" field, if a non-natural person, or the "form of organization" field on the registrant's Form 7-R, the registrant must request withdrawal from registration in accordance with § 3.33.

(b) Each applicant or registrant as a floor broker, floor trader or associated person, and each principal of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8-R or supplemental statement thereto to create a Form 3-R record of change.

(c)(1) After the filing of a Form 8-R or updating a Form 8-R to create a Form 3-R record of change by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, retail foreign exchange dealer, commodity

trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

* * * * *

(d) Each contract market that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person has ceased having trading privileges on such contract market.

* * * * *

12. Amend § 3.33 by revising paragraph (a) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must request that its registration be withdrawn upon filing articles (or a certificate) of dissolution (or cancellation), and upon notice of any involuntary dissolution initiated by a third-party. A futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

13. Amend § 3.40 by revising paragraph (a)(2)(iv) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

(a) * * *

(2) * * *

(iv) Evidence that the applicant has been granted trading privileges by a contract market that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

* * * * *

14. Amend § 3.42 by revising paragraphs (a) introductory text, (a)(6), and (a)(8) to read as follows:

§ 3.42 Termination.

(a) A temporary license issued pursuant to § 3.40 shall terminate:

* * * * *

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum.

* * * * *

(8) Immediately upon notice to the applicant and the applicant's sponsor or the contract market that has granted the applicant trading privileges that:

(i) The applicant failed to disclose relevant disciplinary history information on the applicant's Form 8-R; or

(ii) An event has occurred leading to a required disclosure on the applicant's Form 8-R.

* * * * *

15. Amend § 3.44 by revising paragraph (a)(5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose.

* * * * *

16. Amend § 3.46 by revising paragraph (a) introductory text, (a)(6), (a)(8), and (a)(10) to read as follows:

§ 3.46 Termination.

(a) A temporary license issued pursuant to § 3.44 shall terminate:

* * * * *

(6) Immediately upon failure to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted under section 6(e), 6b, or 6c(d) of the Act;

* * * * *

(8) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, swap execution facility, or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a designated contract market, swap execution facility, or other appropriate arbitration forum.

* * * * *

(10) Immediately upon notice to the applicant and the guarantor futures commission merchant that:

(i) The applicant or any principal (including any branch officer manager) failed to disclose relevant disciplinary history information on the applicant's Form 7-R or on a principal's Form 8-R; or

(ii) An event has occurred leading to a required disclosure on the applicant's Form 7-R or on a principal's Form 8-R.

* * * * *

17. Amend § 3.75 by revising paragraph (a) to read as follows:

§ 3.75 Delegation and reservation of authority.

(a) The Commission hereby delegates, until such time as it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or his designee the authority to grant or deny requests filed pursuant to § 3.12(g). The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated to him pursuant to § 3.12(g). The Commission hereby delegates, until such time as it orders otherwise, the authority to perform all functions specified in subparts B through D to the persons authorized to perform them thereunder.

* * * * *

Issued in Washington, DC, on February 24, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Registration of Intermediaries—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking that will amend certain provisions of Part 3 of the Commission's regulations regarding the registration of intermediaries. The proposed amendments are necessary to conform existing regulations to the new requirements in the Dodd-Frank Act. The proposed rulemaking would amend Part 3 to ensure that the registration process applies to new categories of registrants, such as swap dealers and major swap participants. The proposed

amendments also will modernize existing provisions that will apply to all Commission registrants.

[FR Doc. 2011-4799 Filed 3-8-11; 8:45 am]

BILLING CODE 6351-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33-9193; IC-29592; File No. S7-07-11]

RIN 3235-AL02

References to Credit Ratings in Certain Investment Company Act Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: This is one of several releases that the Securities and Exchange Commission ("Commission") will be considering relating to the use of credit ratings in our rules and forms. In this release, we are proposing a new rule as well as rule and form amendments under the Securities Act of 1933 and the Investment Company Act of 1940 to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Commission is proposing amendments to two rules and four forms under the Investment Company Act and the Securities Act that contain references to credit ratings. The proposed amendments would give effect to provisions of the Dodd-Frank Act that call for the amendment of Commission regulations that contain credit rating references. In addition, the Commission is proposing a new rule under the Investment Company Act to establish a standard of credit-worthiness in place of a statutory reference to credit ratings in that Act that the Dodd-Frank Act removes.

DATES: Comments should be received on or before April 25, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-07-11 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-07-11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

With respect to the proposed rule, rule amendments or Form N-MFP, Anu Dubey, Attorney, or Penelope Saltzman, Assistant Director (202) 551-6792, Office of Regulatory Policy, or with respect to Forms N-1A, N-2 and N-3, Jane H. Kim, Attorney, or Mark T. Uyeda, Assistant Director, (202) 551-6784, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to rules 2a-7 [17 CFR 270.2a-7] and 5b-3 [17 CFR 270.5b-3] and new rule 6a-5 [17 CFR 270.6a-5] under the Investment Company Act of 1940 ("Investment Company Act").¹ The Commission is also proposing for comment amendments to Forms N-1A [17 CFR 239.15A and 17 CFR 274.11A], N-2 [17 CFR 239.14 and 17 CFR 274.11a-1] and N-3 [17 CFR 239.17a and 17 CFR 274.11b] under the Investment Company Act and the Securities Act of 1933 ("Securities Act")² and Form N-MFP [17 CFR 274.201] under the Investment Company Act.

¹ 15 U.S.C. 80a-1. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

² 15 U.S.C. 77a.

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I. Background

The Dodd-Frank Act was enacted on July 21, 2010.³ Section 939A of the Act requires the Commission to review its regulations for any references to or requirements regarding credit ratings that require the use of an assessment of the credit-worthiness of a security or money market instrument, remove these references or requirements and substitute in those regulations other standards of credit-worthiness in place of the credit ratings that we determine to be appropriate.⁴ Section 939 of the Dodd-Frank Act removes a reference to credit ratings from section 6(a)(5) of the Investment Company Act and replaces it with a reference to "such standards of credit-worthiness as the Commission shall adopt."⁵

In 2008, we undertook a review similar to that required under section 939A for references to credit ratings in our rules. As a result of that review, we proposed to eliminate references to ratings issued by nationally recognized statistical rating organizations ("NRSROs") in four rules under the Investment Company Act.⁶ Specifically,

³ Public Law 111-203, 124 Stat. 1376 (2010).

⁴ Section 939A(a)-(b) of the Dodd-Frank Act.

⁵ Section 939(c) of the Dodd-Frank Act (amending section 6(a)(5)(A)(iv)(I) of the Investment Company Act). The Dodd-Frank Act also requires the Commission to adopt a number of rules concerning the integrity and transparency of the credit rating process and the accountability of credit rating agencies. See sections 931 to 939H of the Dodd-Frank Act.

⁶ See References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] ("2008 Ratings Removal Proposing Release"). The Commission also proposed to eliminate references to credit ratings in rules under the Securities Act and the Securities Exchange Act of 1934 (15 U.S.C. 78a) ("Exchange Act"). See Security Ratings, Securities Act Release No. 8940 (July 1, 2008) [73