

- d.1. Abrin;
  - d.2. Aflatoxins;
  - d.3. Botulinum toxins;
  - d.4. Cholera toxin;
  - d.5. Clostridium perfringens toxins;
  - d.6. Conotoxin;
  - d.7. Diacetoxyscirpenol toxin;
  - d.8. HT-2 toxin;
  - d.9. Microcystin (Cyanoginosin);
  - d.10. Modeccin toxin;
  - d.11. Ricin;
  - d.12. Saxitoxin;
  - d.13. Shiga toxin;
  - d.14. Staphylococcus aureus toxins;
  - d.15. T-2 toxin;
  - d.16. Tetrodotoxin;
  - d.17. Verotoxin and other Shiga-like ribosome inactivating proteins;
  - d.18. Viscum Album Lectin 1 (Viscumin);
- or
- d.19. Volkensin toxin.
  - e. "Fungi", as follows:
    - e.1. Coccidioides immitis; or
    - e.2. Coccidioides posadasii.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" and "Toxins," ECCN 1C352 is amended by revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

**1C352 Animal pathogens, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

Unit: \* \* \*

*Related Controls:* The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b); for CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b)).

*Related Definitions:* \* \* \*

*Items:*

\* \* \* \* \*

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" and "Toxins," ECCN 1C360 is amended by revising paragraph (a) in the "Items" paragraph in the List of Items Controlled to read as follows:

**1C360 Select agents not controlled under ECCN 1C351, 1C352, or 1C354.**

\* \* \* \* \*

**List of Items Controlled**

Unit: \* \* \*

*Related Controls:* \* \* \*

*Related Definitions:* \* \* \*

*Items:*

Note: \* \* \*

- a. Human and zoonotic pathogens, as follows:
  - a.1. Viruses, as follows:
    - a.1.a. Central European tick-borne encephalitis viruses, as follows:
      - a.1.a.1. Absettarov;
      - a.1.a.2. Hanzalova;
      - a.1.a.3. Hypr;
      - a.1.a.4. Kumlinge;
    - a.1.b. Cercopithecine herpesvirus 1 (Herpes B virus);
    - a.1.c. Flexal virus;
    - a.1.d. Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments;
  - a.2. [RESERVED];

\* \* \* \* \*

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" and "Toxins," ECCN 1C991 is amended by revising the "Items" paragraph in the List of Items Controlled to read as follows:

**1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

Unit: \* \* \*

*Related Controls:* \* \* \*

*Related Definitions:* \* \* \*

*Items:*

- a. Vaccines against items controlled by ECCN 1C351, 1C352, 1C353, 1C354, or 1C360;
- b. Immunotoxins containing items controlled by 1C351.d;
- c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.3 or conotoxins controlled by ECCN 1C351.d.6;
- d. Medical products containing items controlled by ECCN 1C351.d (except botulinum toxins controlled by ECCN 1C351.d.3, conotoxins controlled by ECCN 1C351.d.6, and items controlled for CW reasons under 1C351.d.11 or .d.12);
- e. Diagnostic and food testing kits containing items controlled by ECCN 1C351.d (except items controlled for CW reasons under ECCN 1C351.d.11 or .d.12).

Dated: August 26, 2011.

**Kevin J. Wolf,**  
*Assistant Secretary for Export Administration.*

[FR Doc. 2011-22677 Filed 9-9-11; 8:45 am]

**BILLING CODE 3510-33-P**

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 5**

**Retail Foreign Exchange Transactions; Conforming Changes to Existing Regulations in Response to the Dodd-Frank Wall Street Reform and Consumer Protection Act**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules; interpretation.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is amending its regulations governing off-exchange foreign currency transactions with members of the retail public (*i.e.*, retail forex transactions). These amendments (Amendments) are necessary to incorporate into Part 5 of the Commission's regulations changes made to the Commodity Exchange Act (CEA) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Commission is also issuing certain related technical interpretations of various provisions of the CEA as amended by the Dodd-Frank Act with respect to retail forex transactions.

**DATES:** Effective September 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, or Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; telephone number: (202) 418-5450; facsimile number: (202) 418-5528; and electronic mail: [ccummings@cftc.gov](mailto:ccummings@cftc.gov) or [bgold@cftc.gov](mailto:bgold@cftc.gov), respectively.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>1</sup> Title VII of the Dodd-Frank Act<sup>2</sup> amended the CEA<sup>3</sup> 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,

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

<sup>2</sup> Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

<sup>3</sup> 7 U.S.C. 1 *et seq.* (2006). The CEA also can be accessed through the Commission's Web site.

among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (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 Commission's oversight.

To accomplish its goal, the Dodd-Frank Act, among other things, amended the existing definitions in, and added new definitions to, CEA Section 1a, which has resulted in a reorganization and renumbering of the definitions in Section 1a.<sup>4</sup> The Dodd-Frank Act also deleted two classes of persons and added a new class of person permitted to serve, or to offer to serve, as a counterparty to a retail forex transaction under CEA Section 2(c)(2)(B) ("permitted counterparty"), which similarly has resulted in a reorganization and redesignation of the CEA provisions identifying these permitted counterparties.<sup>5</sup>

As is explained below, the foregoing changes to the CEA necessitate corresponding amendments to Part 5 of the Commission's regulations,<sup>6</sup> which concerns retail forex transactions. In this regard, the Commission notes that it is also proposing other rulemakings in response to the Dodd-Frank Act that could affect the Part 5 regulations.<sup>7</sup> The Commission intends to resolve any discrepancies that may arise between any of these other rulemakings and the Amendments in the course of finalizing its rulemakings under the Dodd-Frank Act.

## II. The Amendments

### A. Amendments Resulting Solely From a Renumbering of a CEA Definition

Several definitions in Regulation 5.1 employ the phrase "eligible contract participant as that term is defined in [CEA] Section 1a(12)." Specifically, this phrase is found in the following definitions in Regulation 5.1: "commodity pool operator" (paragraph

(d)(1) of the regulation); "commodity trading advisor" (paragraph (e)(1) of the regulation); "introducing broker" (paragraph (f)(1) of the regulation); "retail forex account" (paragraph (i) of the regulation); and "retail forex account agreement" (paragraph (j) of the regulation). However, as a result of the Dodd-Frank Act, the term "eligible contract participant" is now defined in CEA Section 1a(18). By the Amendments, the Commission is amending Regulations 5.1(d)(1), (e)(1), (f)(1), (i) and (j) to reflect this numbering change, such that each of the definitions contained in these regulations refers to CEA Section 1a(18).<sup>8</sup>

Regulations 5.10, which concerns risk assessment recordkeeping applicable to retail forex transactions, and 5.11, which concerns risk assessment reporting applicable to retail forex transactions, provide at paragraphs (c)(2) and (d)(2), respectively, that "the term 'Foreign Futures Authority' shall have the meaning set forth in [CEA] section 1a(10)." As a result of the Dodd-Frank Act, this term is now defined in CEA Section 1a(26). The Amendments similarly change Regulations 5.10(c)(2) and 5.11(d)(2) to reflect this numbering change, such that the definition of "Foreign Futures Authority" refers to CEA Section 1a(26).

Regulation 5.18 establishes trading and operational standards for persons offering to serve as a retail forex counterparty. Specifically, paragraph (a)(1)(ii) refers to such persons as a "[f]utures commission merchant as defined in [CEA] Section 1a(20)." Pursuant to the Dodd-Frank Act, the term "futures commission merchant" (FCM) is now defined in CEA Section 1a(28). Accordingly, the Amendments likewise revise Regulation 5.18(a)(1)(ii) so that the FCM reference therein is to CEA Section 1a(28).

### B. Amendments Resulting From the Change in Permitted Counterparties

Regulation 5.1(h) defines the term "retail foreign exchange dealer" (RFED) to mean "any person that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee) or (ff) of [CEA] section 2(c)(2)(B)(i)(II)." <sup>9</sup> The Dodd-Frank Act: (1) Removed from this list of permitted counterparties the persons

previously found in items (dd) and (ff), which respectively referred to certain insurance companies (including a regulated subsidiary or affiliate) and investment bank holding companies; (2) redesignated item (ee) as item (dd); and (3) redesignated item (gg) as item (ff).<sup>10</sup> In light of these changes, the Amendments delete from Regulation 5.1(h)(1) the references therein to items (ee) and (ff) of CEA Section 2(c)(2)(B)(i)(II). For similar reasons, the Amendments change the references in Regulations 5.10(a)(1), 5.11(a)(1) and 5.11(a)(2) to the authority pursuant to which a person is registered with the Commission as an RFED from CEA Section 2(c)(2)(B)(i)(II)(gg) to CEA Section 2(c)(2)(B)(i)(II)(ff).

### C. Amendments Related to the FCM Definition

For the effective regulation of retail forex transactions, the CEA and Part 5 distinguish between an FCM that is "primarily or substantially" engaged in soliciting and accepting orders for exchange-traded futures contracts and accepting customer funds or property to margin or secure such contracts, who is permitted under CEA Section 2(c)(2)(B)(i)(II)(cc) to engage in retail forex transactions based on its registration as an FCM, and a person that is registered as an FCM but is not "primarily or substantially" engaged in those activities, who must register as an RFED in order to engage in retail forex transactions. Regulation 5.1(g) currently provides that the term "[p]rimarily or substantially means, when used to describe the extent of a futures commission merchant's engagement in the activities described in section 1a(20)" of the CEA, that the FCM's gross revenues meet certain thresholds, or that the FCM is a clearing member of a derivatives clearing organization.<sup>11</sup> The Commission explained this distinction, which originated in the CFTC Reauthorization Act of 2008 (CRA),<sup>12</sup> as being "for use in determining whether a registered FCM is primarily or substantially engaged in FCM activities, such that it need not register as an RFED in order to conduct customer business."<sup>13</sup>

Thus, the Commission defined the term "primarily or substantially" in

<sup>10</sup> As a result of these changes, then, the identification of the permitted counterparties in CEA Section 2(c)(2)(B)(i)(II) runs from (aa) through (dd), skips (ee), and ends at (ff). See Part III of this *Federal Register* release, *infra*.

<sup>11</sup> See CEA Section 5b and Part 39 of the Commission's regulations.

<sup>12</sup> See Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110-246, 122 Stat. 1651, 2189-2204 (2008).

<sup>13</sup> 75 FR 3282, 3288 (Jan. 20, 2010).

<sup>4</sup> See Dodd-Frank Act Section 721(a).

<sup>5</sup> See Dodd-Frank Act Section 742(c)(1).

<sup>6</sup> The Commission's regulations are found at 17 CFR Ch. I (2011) and can be accessed through the Commission's Web site, <http://www.cftc.gov>.

<sup>7</sup> See, e.g., Adaptation of Regulations to Incorporate Swaps, 76 FR 33066 (Jun. 7, 2011) ("June 7 Proposal"), whereby in response to the deletion of the term "derivatives transaction execution facility" from the CEA by the Dodd-Frank Act, the Commission has proposed to delete reference to the term "derivatives transaction execution facility" from Regulation 5.1(m), which defines the term "retail forex transaction."

<sup>8</sup> For the same reason, by the June 7 Proposal, the Commission proposed to amend the definition of the term "retail forex customer" in paragraph (k) of Regulation 5.1, such that the definition similarly would refer to Section 1a(18).

<sup>9</sup> CEA Section 2(c)(2)(B) generally provides the Commission with authority over retail forex transactions.

Regulation 5.1(g), and drafted the requirement to register as an RFED if a registered FCM was not engaged primarily or substantially in FCM activities, with reference to the activities described in the then-existing FCM definition and by means of a simple reference to “the activities described in Section 1a(20)” of the CEA. However, in addition to renumbering the FCM definition in the CEA from Section 1a(20) to Section 1a(28), the Dodd-Frank Act amended the FCM definition itself to include certain activities involving swaps and retail forex transactions among the activities that bring a person within the FCM definition, and it added to the FCM definition any person that is registered with the Commission as an FCM.<sup>14</sup> In order to maintain the distinction between FCM and RFED established by the CRA, the Amendments amend Regulations 5.1(g) and 5.3(a)(4)(i) such that each of these rules refers solely to those provisions of the CEA’s FCM definition that were in effect at the time of adoption of the CRA—*i.e.*, the activities that, pursuant to the Dodd-Frank Act, are now set forth in CEA Sections 1a(28)(A)(i)(I)(aa)(AA) (“the purchase or sale of a commodity for future delivery”) and 1a(28)(A)(i)(II) (“in or in connection with the activities described in [item aa of subclause (I)], accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom”).

### III. Interpretation of Dodd-Frank Act Amendments to CEA Sections 2(c)(2)(B) and 2(c)(2)(C)

As is noted above, the Dodd-Frank Act revised the list of permitted counterparties in CEA Section 2(c)(2)(B)(i)(II) from items (aa) through (gg), to items (aa) through (dd) and (ff) (without an item (ee)). It did so in order both to delete insurance companies and investment bank holding companies from the list of permitted counterparties in CEA Section 2(c)(2)(B)(i)(II) and to redesignate the items corresponding to the remaining permitted counterparties.<sup>15</sup> However, in amending CEA Sections 2(c)(2)(B) and 2(c)(2)(C),<sup>16</sup> the Dodd-Frank Act did not adjust certain internal references in these sections to reflect these changes to the list of permitted counterparties.

Thus, for example, at numerous places CEA Section 2(c)(2)(B) continues

to refers to item (gg), although item (gg) has been redesignated as item (ff).<sup>17</sup> Similarly, in various other provisions of CEA Sections 2(c)(2)(B) and 2(c)(2)(C) the permitted counterparties *other than FCMs and RFEDs* are listed as either “item (aa), (bb), (dd), (ee) or (ff)” of CEA Section 2(c)(2)(B)(i)(II) or “item (aa) through (ff)” of CEA Section 2(c)(2)(B)(i)(II).<sup>18</sup> These references now inadvertently include RFEDs, because RFEDs are now listed in item (ff). Finally, these same references inadvertently no longer include a financial holding company, because while the Dodd-Frank Act redesignated this permitted counterparty as item (dd), it nonetheless called for “striking ‘(dd)’ each place it appears” in CEA Sections 2(c)(2)(B) and 2(c)(2)(C).<sup>19</sup>

To avoid any impediment to a full implementation of its regulatory program for retail forex transactions that any of the foregoing provisions might present, by this **Federal Register** release the Commission is issuing the following interpretations of the Dodd-Frank Act. First, to clarify that CEA Section 2(c)(2)(B)(i)(II) includes a financial holding company as a permitted counterparty to retail forex transactions, the Commission interprets the directions in Dodd-Frank Act Sections 741(b)(8) and (b)(9) to strike item “(dd)” each place it appears as a direction to strike item “(ee)” instead.<sup>20</sup> This interpretation is necessary and appropriate because pursuant to the Dodd-Frank Act item (dd) includes a financial holding company as a permitted counterparty to retail forex transactions and item (ee) no longer exists in CEA Section 2(c)(2)(B)(i)(II). Second, to clarify that an RFED is a permitted counterparty, the Commission

interprets each reference in CEA Sections 2(c)(2)(B) and 2(c)(2)(C) to “item (gg)” as a reference to “item (ff).” This interpretation similarly is necessary and appropriate because pursuant to the Dodd-Frank Act item (ff) includes an RFED as a permitted counterparty and item (gg) no longer exists in CEA Section 2(c)(2)(B)(i)(II).

### IV. Related Matters

#### A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.<sup>21</sup> This requirement does not apply, however, if the agency “for good cause finds \* \* \* that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”<sup>22</sup> In addition, the APA generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective, with certain exceptions, including if an agency finds good cause.<sup>23</sup> The Commission finds that notice and solicitation of comment before the effective date of the changes being made herein are unnecessary, inasmuch as the rule changes are entirely non-substantive technical adjustments, and the interpretation would do no more than clarify certain technical drafting anomalies to express what is clearly the intent of the Dodd-Frank Act.<sup>24</sup> Accordingly, pursuant to section 553(b) of the APA, the Commission finds that there is good cause not to follow notice and comment procedures for this rulemaking. For the same reason, the Commission finds, pursuant to section 553(b) of the APA, that the Amendments may be made effective immediately upon publication in the **Federal Register**.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>25</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses.<sup>26</sup> The

<sup>17</sup> This occurs once each in CEA Sections 2(c)(2)(B)(iii), 2(c)(2)(B)(iv)(I) and 2(c)(2)(B)(iv)(III), and twice in CEA Section 2(c)(2)(B)(v).

<sup>18</sup> Reference to “item (aa), (bb), (dd), (ee) or (ff)” of CEA Section 2(c)(2)(B)(i)(II) occurs in Sections 2(c)(2)(B)(iv)(I)(aa), 2(c)(2)(B)(iv)(I)(bb), 2(c)(2)(B)(iv)(I)(cc), 2(c)(2)(B)(iv)(II)(aa), 2(c)(2)(C)(i)(I)(aa), 2(c)(2)(C)(ii)(II)(aa), 2(c)(2)(C)(iii)(I)(aa), 2(c)(2)(C)(iii)(I)(bb) and 2(c)(2)(C)(iii)(II)(aa). The reference to “item (aa) through (ff)” occurs in CEA Section 2(c)(2)(B)(iv)(IV)(aa).

<sup>19</sup> Absent the interpretation being provided herein, the instruction in Dodd-Frank Act Sections 741(b)(8)(A) and 741(b)(9)(A) for “striking ‘(dd)’ each place it appears” in CEA Sections 2(c)(2)(B) and 2(c)(2)(C) not only would remove the (dd) item heading from Section 2(c)(2)(B)(i)(II)(dd) (which identifies a financial holding company as a permitted counterparty for retail forex transactions), but it would also affect all of the cross-references to “item (aa), (bb), (dd), (ee) or (ff),” identified previously.

<sup>20</sup> Thus, CEA Section 2(c)(2)(B)(i)(II)(dd) retains its designation, and each reference to “item (aa), (bb), (dd), (ee) or (ff)” identified previously continues to include a reference to “a financial holding company.”

<sup>21</sup> See 5 U.S.C. 553(b). This requirement does not apply to interpretative rules or general statements of policy.

<sup>22</sup> *Id.*

<sup>23</sup> See 5 U.S.C. 553(d).

<sup>24</sup> This finding also satisfies the requirements of the Congressional Review Act, specifically 5 U.S.C. 808(2), allowing the Proposal to become effective, notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are “impracticable, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the Federal agency promulgating the rule determines”).

<sup>25</sup> 5 U.S.C. 601 *et seq.* (2006).

<sup>26</sup> By its terms, the RFA does not apply to “individuals.” See 48 FR 14933, n. 115 (Apr. 6, 1983).

<sup>14</sup> See Dodd-Frank Act Section 721(a)(13).

<sup>15</sup> See Dodd-Frank Act Sections 741(b) and 742(c).

<sup>16</sup> CEA Section 2(c)(2)(C) generally provides the Commission with authority over certain transactions that are not within the scope of CEA Section 2(c)(2)(B).

Commission previously has established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>27</sup> The Commission previously has determined that FCMs and RFEDs should not be considered small entities for purposes of the RFA.<sup>28</sup> With respect to commodity pool operators (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).<sup>29</sup> Thus, because the Amendments apply to registered CPOs, the RFA is not applicable to them. As for introducing brokers (IBs) and commodity trading advisors (CTAs), the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all or some affected IBs and CTAs would be considered to be small entities and, if so, the economic impact on them of the particular rule.<sup>30</sup> In this regard, the Commission notes that the Amendments apply to registered IBs and registered CTAs, and do not change their existing obligations or burdens. Moreover, as is explained below, the Amendments will not have a significant economic impact on any person who would be affected thereby, because they will not impose any additional operational requirements or otherwise direct or confine the activities of affected persons. Accordingly, the Chairman hereby certifies pursuant to 5 U.S.C. 605(b) that the Amendments will not have a significant economic impact on a substantial number of small entities.

### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)<sup>31</sup> imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission believes that the Amendments will not impose new recordkeeping or information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the PRA does not apply to this rulemaking.

<sup>27</sup> See 47 FR 18618 (Apr. 30, 1982).

<sup>28</sup> See 47 FR 18618, 18619 (Apr. 30, 1982) (FCMs) and 75 FR 55410, 55416 (Sep. 10, 2010) (RFEDs).

<sup>29</sup> See 47 FR at 18619–20.

<sup>30</sup> See 48 FR 35248, 35276 (Aug. 3, 1993) (IBs) and 47 FR at 18619, 18620 (CTAs).

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

### D. Cost-Benefit Considerations

Section 15(a) of the CEA<sup>32</sup> requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it simply requires that the Commission “consider” the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could 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 accomplish any of the purposes of the CEA.

*Summary of Amendments.* As is explained above, the Amendments to Part 5 ensure that the Commission’s regulations governing retail forex transactions reflect changes made to the CEA by the Dodd-Frank Act by, *e.g.*, aligning references in Part 5 to definitional and other provisions in the CEA with the appropriate provisions in the CEA as amended by the Dodd-Frank Act.

*Costs.* With respect to costs, the Commission has determined that the costs of the Amendments will not be significant. This is because the Amendments will simply amend the current Part 5 text to take into account the numerical and designation changes made to the CEA as a result of the Dodd-Frank Act. No changes are being made to the existing regulatory framework. Thus there will be little (if any) costs to persons who will be affected by the Amendments.

*Benefits.* With respect to benefits, the Commission has determined that the benefits of the Amendments will be significant. This is because they will maintain the customer protections currently provided under Part 5 by ensuring that the provisions of Part 5 accurately reflect the text of the CEA as amended by the Dodd-Frank Act.

<sup>32</sup> 7 U.S.C. 19(a).

### List of Subjects in 17 CFR Part 5

Bulk transfers, Commodity pool operators, Commodity trading advisors, Consumer protection, Customer’s money, securities and property, Definitions, Foreign exchange, Minimum financial and reporting requirements, Prohibited transactions in retail foreign exchange, Recordkeeping requirements, Retail foreign exchange dealers, Risk assessment, Special calls, Trading practices.

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

### PART 5—OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS

■ 1. The authority citation for part 5 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

#### § 5.1 [Amended]

■ 2. Section 5.1 is amended by:

■ a. Removing from paragraphs (d)(1)(i), (e)(1), (f)(1), (i) and (j) the words “section 1a(12) of the Act” and adding in their place the words “section 1a(18) of the Act”;

■ b. Removing from paragraph (g) introductory text the words “section 1a(20) of the Act” and adding in their place the words “section 1a(28)(A)(i)(I)(aa)(AA) of the Act and section 1a(28)(A)(i)(II) of the Act insofar as that section references the activities described in section 1a(28)(A)(i)(I)(aa)(AA)”;

■ c. Removing from paragraph (h)(1) the words “sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee) or (ff)” and adding in their place the words “item (aa), (bb), (cc)(AA) or (dd)”.

#### § 5.3 [Amended]

■ 3. Section 5.3 is amended by removing from paragraph (a)(4)(i)(A) the words “section 1a(20) of the Act” and adding in their place the words “section 1a(28)(A)(i)(I)(aa)(AA) of the Act and section 1a(28)(A)(i)(II) of the Act insofar as that section references the activities described in section 1a(28)(A)(i)(I)(aa)(AA)”.

#### § 5.10 [Amended]

■ 4. Section 5.10 is amended by:

■ a. Removing from paragraph (a)(1) introductory text the words “section 2(c)(2)(B)(i)(II)(gg) of the Act” and

adding in their place the words “section 2(c)(2)(B)(i)(II)(ff) of the Act”; and

■ b. Removing from paragraph (c)(2) the words “section 1a(10) of the Act” and adding in their place the words “section 1a(26) of the Act”.

#### § 5.11 [Amended]

- 5. Section 5.11 is amended by:
- a. Removing from paragraph (a)(1) introductory text the words “Section 2(c)(2)(B)(i)(II)(gg) of the Act” and adding in their place the words “section 2(c)(2)(B)(i)(II)(ff) of the Act”; and
- b. Removing from paragraph (a)(2) introductory text the words “section 2(c)(2)(B)(i)(II)(gg) of the Act” and adding in their place the words “section 2(c)(2)(B)(i)(II)(ff) of the Act”; and
- c. Removing from paragraph (d)(2) the words “section 1a(10) of the Act” and adding in their place the words “section 1a(26) of the Act”.

#### § 5.18 [Amended]

- 6. Section 5.18 is amended by removing from paragraph (a)(1)(ii) the words “section 1a(20) of the Act” and adding in their place the words “section 1a(28) of the Act”.

Issued in Washington, DC, on September 2, 2011, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011-23155 Filed 9-9-11; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA-2011-0015]

RIN 0960-AH31

#### Requiring Use of Electronic Services by Certain Claimant Representatives

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are revising our rules to require that claimant representatives use our electronic services as they become available on matters for which the representatives request direct fee payment. In the future, we will publish a notice in the **Federal Register** when we require representatives who request direct fee payment on a matter to use our available electronic services. We are also adding the requirement to use our available electronic services on matters for which the representative requests direct fee payment as an affirmative duty in our representative conduct rules. These revisions reflect the increased use of technology in representatives' business practices. We

expect that the use of electronic services will improve our efficiency by allowing us to manage our workloads more effectively. These rules do not require claimants to use our available electronic services directly; they only require their representatives to use the services on matters for which the representatives request direct fee payment.

**DATES:** These final rules are effective on October 12, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-6716. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

We may issue rules and regulations to administer the Social Security Act (Act), 42 U.S.C. 405(a), 902(a)(5), 810(a), and 1383(d)(1).

On September 8, 2008, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled *Revisions to Rules on Representation of Parties*, and we gave the public 60 days to comment. 73 FR 51963.

In the NPRM, we proposed to add an affirmative duty that would have required professional representatives to conduct business with us electronically at the times and in the manner that we prescribe. We proposed to define a professional representative as “any attorney, any individual other than an attorney, or any entity that holds itself out to the public as providing representational services \* \* \* before us, regardless of whether the representative charges or collects a fee for providing the representational services.” Proposed sections 404.1703 and 416.1503. We received several comments that opposed our broad definition of professional representative and our proposal that all professional representatives must conduct business with us electronically at the times and in the manner we prescribe.

After careful consideration of these comments, we decided to require some, and encourage all, representatives to use our electronic services as much as possible.

Therefore, we are adding sections 404.1713 and 416.1513 and revising sections 404.1740(b)(4) and 416.1540(b)(4) to require that representatives conduct business with us electronically at the times and in the

manner we prescribe on matters for which they request direct fee payment. This means that a representative will be required to use our available electronic services in conducting business with us on any matter for which he or she has or will request direct fee payment.

We continue to consider the rest of the regulatory changes we proposed in the NPRM, and we may publish additional final rules to address them.

#### Requiring Use of Our Electronic Services

We employ comprehensive usability testing, which includes inviting members of the public to test our electronic services and provide feedback, to ensure that our electronic services work well before we make them publicly available. Even after we make electronic services publicly available, we use customer satisfaction surveys and request user feedback to improve them. In accordance with our usual practice, we intend to employ usability testing and solicit user feedback for any electronic services we may require representatives to use under these final rules. Once we determine that we should make a particular electronic service publicly available because it works well, we will publish a notice in the **Federal Register**. The notice will contain the new requirement(s) and a list of all established electronic service requirements.

If we discover that a representative who has an affirmative duty to use the available electronic services is not complying with our rules, we may investigate to determine if the representative is purposefully violating this duty or attempting to circumvent our rules. We will use our existing rules in sections 20 CFR 404.1740-404.1799 and 416.1540-416.1599 to address potential violations.

We will not penalize the claimant if the representative disregards his or her affirmative duty to use our electronic services. We will not reject or delay a claimant's request or process it differently if a representative fails to comply with this rule, but we may decide to pursue sanctions against the representative in appropriate cases.

We also proposed to add sections 404.1713 and 416.1513, in addition to the affirmative duty in proposed sections 404.1740 and 416.1540. We are adopting, with minor changes, only the provisions of sections 404.1713(a) and 416.1513(a) that we proposed, and we are adopting, with minor changes, our proposed affirmative duty in final sections 404.1740 and 416.1540. We are also making other conforming changes.