Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038-AC28

Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission hereby proposes amendments to the Acceptable Practices [1] for section 5(d)(15) (''Core Principle 15'') of the Commodity Exchange Act (''CEA'' or ''Act'').[2] The amendments clarify the definition of ''public director'' contained in the Acceptable Practices.[3] The Commission believes that the proposed amendments will remove potential ambiguities and correct a technical drafting error. The amendments are consistent with the Acceptable Practices' intent to ensure the inclusion of truly public directors on designated contract market (''DCM'') boards of directors and Regulatory Oversight Committees (''ROCs''), as well as truly public persons on their disciplinary panels. The Commission welcomes comment on the proposed amendments.

DATES: Comments should be submitted on or before April 25, 2007.

ADDRESSES: Comments should be sent to Eileen A. Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Comments may be submitted via e-mail at *secretary@cftc.gov.* ''Regulatory Governance'' must be in the subject field of responses submitted via e-mail, and clearly indicated in written submissions. Comments may also be submitted at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Acting Deputy Director for Market Compliance, (202) 418–5429; or Sebastian Pujol Schott, Special Counsel, (202) 418–5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 2007, the Commission published final Acceptable Practices for Core Principle 15 of the Act.[4] The published Acceptable Practices are the first for Core Principle 15 and are applicable to all DCMs.[5] They pertain to minimizing conflicts of interest in decision making by DCMs, and offer all DCMs a ''safe harbor'' by which they may minimize such conflicts and thereby comply with Core Principle 15. To receive safe harbor treatment, DCMs must implement the Acceptable Practices' various operational provisions in their entirety, including instituting boards of directors that are composed of at least 35% public directors and establishing oversight of all regulatory functions through ROCs consisting exclusively of public directors.[6] In addition to these operational provisions, the Acceptable Practices also set forth a public director definition. The proposed amendments consist exclusively of revisions to that definition.

II. Need for Clarifying Amendments

The Commission proposes to amend two subsections of the Acceptable Practices, Subsections (b)(2)(ii)(B) and (b)(2)(ii)(C), which together with Subsections (b)(2)(i), (b)(2)(ii)(A) and (b)(2)(ii)(D), establish the definition of a DCM public director.[7] In general, the amendments address ambiguities that may arise from those provisions' different uses of the terms ''affiliate'' and ''affiliated.'' Such uses include references to corporate affiliation; personal affiliation; affiliation with a DCM member; and affiliation with a firm. The amendments also correct a technical drafting error and define ''payments.'' The proposed amendments are consistent with the intent of both the proposed and final Acceptable Practices, and should not be interpreted as a diminution in the level of independence that those criteria are intended to ensure for public directors. In light of the nature of these amendments, the Commission does not anticipate that it will be necessary to extend the comment period.

III. Description of Clarifying Amendments

A. Subsection (b)(2)(ii)(B)

Subsection (b)(2)(ii)(B) precludes DCM members, employees of members, and persons ''affiliated'' with members from service as public directors. As adopted, the Acceptable Practices define ''affiliated with a member'' as being an officer or director of a member, or having ''any other relationship with the member such that his or her impartiality could be called into question in matters concerning the member.'' This impartiality provision reflects a qualitative test intended to capture specific disqualifying relationships between individuals and DCM members.

The Commission proposes to amend the definition of ''affiliated'' in Subsection (b)(2)(ii)(B) by removing any reference to the qualitative ''impartiality'' test outlined above. This eliminates the qualitative test and replaces it with an exact articulation of the relationships that are prohibited under Subsection (b)(2)(ii)(B).

[1] The acceptable practices for core principles reside in Appendix B to Part 38 of the Commission's Regulations, 17 CFR Part 38, App. B.

[2] The Act is codified at 7 U.S.C. 1 *et seq.* (2000).

[3] Those Acceptable Practices were adopted by the Commission on January 31, 2007, 72 FR 6936 (February 14, 2007), after having been originally proposed by the Commission on June 28, 2006, 71 FR 38740 (July 7, 2006).

[4] Core Principle 15 states: ''CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.'' CEA § 5(d)(15), 7 U.S.C. 7(d)(15).

[5] Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 15(A)(a) of the Securities Exchange Act of 1934, or is an alternative trading system, and that operates as a DCM in security futures products under Section 5f of the Act and Commission Regulation 41.31, is exempt from the core principles enumerated in Section 5 of the Act and the acceptable practices thereunder.

[6] The Acceptable Practices became effective on March 16, 2007. Existing DCMs were given two years, measured from the effective date, to achieve full compliance with Core Principle 15.

[7] Other than Subsections (b)(2)(ii)(B) and (b)(2)(ii)(C), the Commission is not proposing changes to any other provision of the Acceptable Practices for Core Principle 15.

Specifically, the amendment states that a person is ''affiliated'' with a DCM member, and thus disqualified as a public director, if he or she is an ''officer, director, or partner of the member.''

B. Subsection (b)(2)(ii)(C)

Subsection (b)(2)(ii)(C) creates a bright-line, $100,000 combined annual payments test for potential public directors and the firms with which they are affiliated (''payment recipients''). A particular payment's relevance to the $100,000 bright-line test depends upon the source (''payment provider'') and nature of the payment. The Commission proposes to amend this subsection to define ''payment;'' clarify the term ''affiliate,'' as used in the subsection; remove the term ''affiliated'' in referring to certain relationships and replace it with the specific payment providers and recipients that the Commission intends to reach; and correct a technical drafting error.

The first amendment defines the nature of ''payment,'' limiting it to compensation for professional services rendered. The amendment reflects the Commission's intent to capture those persons and firms providing professional services to a DCM and/or its members, as well as the employees, officers, directors, and partners of such firms.

The second amendment to Subsection (b)(2)(ii)(C) clarifies the clause ''any affiliate of the contract market.'' Clarification is provided via explicit cross-reference to Subsection (b)(2)(ii)(A), which defines the affiliates of a contract market to include the parents or subsidiaries of the contract market or entities that share a common parent with the contract market. This proposed amendment is consistent with the Commission's original intent.

Two other amendments to Subsection (b)(2)(ii)(C) address payment providers and recipients, resolving potential ambiguities arising from multiple uses of the term ''affiliated.'' In addition, one of the amendments corrects a drafting error in this subsection which resulted from the inadvertent inclusion of ''entity'' in the clause ''any person or entity affiliated with a member of the contract market'' (''member payment-providers provision''). The inclusion of ''entity'' in the member payment-providers provision resulted in a standard that encompassed a range of payment providers broader than the Commission intended. The Commission proposes to remedy its error by deleting ''entity.''

With respect to ''affiliated,'' the Commission notes that the term is not defined in the member payment-providers provision. Potential ambiguity could arise in importing and applying a definition from elsewhere in the Acceptable Practices. Accordingly, the Commission proposes to amend and clarify the member payment-providers provision by replacing the term ''affiliated'' with a precise articulation of the member payment providers it intends to reach. Consistent with the proposed Acceptable Practices, the Commission proposes to amend the adopted member payment-providers provision so that it refers to payments ''from a member or an officer or director of a member* * *.''

Similarly, the Commission has determined to specifically define the payment recipients that it intends to reach. In the adopted Acceptable Practices, the relevant recipients include ''a firm with which the director is affiliated, as defined above,'' implying a cross-reference to Subsection (b)(2)(ii)(B). Furthermore, through this cross-reference, the payment recipients provision incorporates the qualitative impartiality test embedded within the adopted Subsection (b)(2)(ii)(B).[8]

As previously noted, the Commission has determined that the qualitative impartiality test in Subsection (b)(2)(ii)(B) is best replaced with a specific articulation of the relevant relationships. Similarly, the Commission believes that a specific articulation is appropriate with respect to payment recipients in Subsection (b)(2)(ii)(C), both to remove any ambiguities which may exist and to eliminate the cross-reference upon which the payment recipients provision currently relies. Accordingly, the Commission proposes to amend Subsection (b)(2)(ii)(C) to reach payments made to the director and payments made to firms ''of which the director is an employee, officer, director, or partner.''

Finally, as adopted, the last sentence in Subsection (b)(2)(ii)(C) states, in part, that ''compensation for services as a director does not count toward the $100,000 payment limit.'' This provision was intended to avoid the dilemma of DCM public directors forfeiting their public director eligibility because of compensation received for serving in such capacity. The Commission notes, however, that proposed changes elsewhere in this Subsection contain new references to various types of directors and that those changes may create uncertainty as to the meaning of ''director'' in this context. Accordingly, the Commission proposes to insert ''of the contract market'' after ''director,'' making clear that compensation for services as a director of the contract market does not count toward the $100,000 payment cap.

[8] Discussed in Section III(A) of this preamble.

IV. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the CEA.[9] By its terms, Section 15(a) requires the Commission to ''consider the costs and benefits'' of a subject rule or order without requiring the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Section 15(a) requires that the costs and benefits of proposed rules 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. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may 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.[10]

On February 14, 2007, the Commission published final Acceptable Practices for Core Principle 15 that included prophylactic measures designed to minimize conflicts of interest in a DCM's decision making process.[11] The final rulemaking thoroughly considered the costs and benefits of the Acceptable Practices and responded to comments relating to the costs of adhering to their requirements.

The amendments herein to the adopted Acceptable Practices are proposed to enhance regulatory certainty by addressing potential definitional ambiguities and a drafting error. The removal of such ambiguities will facilitate the inclusion of public directors on DCM governing boards and committees and ensure that DCMs are able to comply with the requirements of the Acceptable Practices. In turn,

[9] 7 U.S.C. 19(a).

[10] *E.g, Fishermen's Dock Co-op., Inc.* v. *Brown.* 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck*, 751 F.2d 1336 (D.C. Cir. 1985)(agency has discretion to weigh factors in undertaking costs-benefits analyses).

[11] 72 FR 6936 (February 14, 2007).

compliance with the Acceptable Practices will assure DCMs of their compliance with the requirements of Core Principle 15 as they pertain to conflicts of interest in self-regulation and self-regulatory organizations. The amendments should not impose additional costs, but in fact may reduce costs of compliance in light of the removal of ambiguities. They assure that what is intended to be a bright-line test operates as such. After considering the above mentioned factors and issues, the Commission has determined to propose these amendments to the Acceptable Practices of Core Principle 15. The Commission specifically invites public comment on its application of the criteria contained in Section 15(a) of the Act and furthermore invites interested parties to submit any quantifiable data that they may have concerning the costs and benefits of the proposed amendments to the Acceptable Practices of Core Principle 15.

B. Paperwork Reduction Act of 1995

These proposed amendments to the Acceptable Practices of Core Principle 15 would 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 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply. We solicit comment on the accuracy of our estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the amendments proposed herein.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The proposed amendments to the Acceptable Practices for Core Principle 15 affect DCMs. The Commission has previously determined that DCMs are not small entities for purposes of the Regulatory Flexibility Act.[12] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed amendments to the Acceptable Practices will not have a significant economic impact on a substantial number of small entities.

[12] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

V. Text of Proposed Amendments to Acceptable Practices for Core Principle 15

List of Subjects in 17 CFR Part 38

Commodity futures, Reporting and recordkeeping requirements.

In light of the foregoing, and pursuant to the authority in the Act, and in particular, Sections 3, 5, 5c(a) and 8a(5) of the Act, the Commission hereby proposes to amend Part 38 of Title 17 of the Code of Federal Regulations as follows:

PART 38—DESIGNATED CONTRACT MARKETS

1. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2, and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. In Appendix B to Part 38 amend paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C) of the Acceptable Practices for Core Principle 15 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles

* * * * *

Core Principle 15 of section 5(d) of the Act: CONFLICTS OF INTEREST

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) The director is a member of the contract market, or a person employed by or affiliated with a member. ''Member'' is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q). In this context, a person is ''affiliated'' with a member if he or she is an officer, director, or partner of the member;

(C) The director, or a firm of which the director is an employee, officer, director or partner, receives more than $100,000 in combined annual payments from the contract market, any affiliate of the contract market, as defined in Subsection (2)(ii)(A), or from a member or an officer or director of a member of the contract market. As used in this Subsection (2)(ii)(C), ''payments'' means compensation for professional services. Compensation for services as a director of the contract market does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

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Issued in Washington, DC, on March 20, 2007 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. E7–5468 Filed 3–23–07; 8:45 am]

BILLING CODE 6351–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2006–0103]

RIN 0960–AF99

Technical Updates to Applicability of the Supplemental Security Income (SSI) Reduced Benefit Rate for Individuals Residing in Medical Treatment Facilities

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our regulations to codify two provisions of the Balanced Budget Act of 1997 that affect the payment of benefits under title XVI of the Social Security Act (the Act). One of the provisions extended temporary institutionalization benefits to children receiving SSI benefits who enter private medical treatment facilities and who otherwise would be ineligible for temporary institutionalization benefits because of private insurance coverage. The other provision replaced obsolete terminology in the Act that referred to particular kinds of medical facilities and substituted a broader, more descriptive term.

DATES: To be sure that we consider your comments, we must receive them by May 25, 2007.

ADDRESSES: You may give us your comments: by Internet through the Federal eRulemaking Portal at *http://www.regulations.gov*; by e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

FOR FURTHER INFORMATION CONTACT: Curt Dobbs, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7963 or TTY (410) 966–5609, for information about this notice. 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,