

Commodity Futures Trading Commission

§ 3.10

dealer or major swap participant) must register as such under the Act. Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, registration in one capacity under the Act shall not include registration in any other capacity.

(b) Except as may be provided in any rule, regulation or order of the Commission, registration as an associated person in one capacity shall not include registration as an associated person in any other capacity: *Provided, however,* That an associated person who is sponsored by a registrant, which itself is registered in more than one capacity, need register only once to act as an associated person of the registrant, and shall be deemed to be an associated person of such registrant, in each such capacity.

[49 FR 39530, Oct. 9, 1984, as amended at 58 FR 19590, Apr. 15, 1993; 75 FR 55424, Sept. 10, 2010; 77 FR 2626, Jan. 19, 2012; 77 FR 51904, Aug. 28, 2012]

§§ 3.5–3.9 [Reserved]

§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants and leverage transaction merchants.

(a) *Application for registration.* (1)(i) Except as provided in paragraph (a)(3) of this section, application for registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant must be on Form 7-R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant, retail foreign exchange dealer or introducing broker must accompany their Form 7-R with a Form 1-FR-FCM or Form 1-FR-IB, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing

broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7-R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part II A, in accordance with the provisions of § 1.10(h) of this chapter.

(iii) Applicants for registration as a commodity pool operator must accompany their Form 7-R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7-R with a Form 2-FR in accordance with the provisions of § 31.13 of this chapter.

(v)(A) Applicants for registration as a swap dealer or major swap participant must accompany their Form 7-R with such documentation as may be required to demonstrate compliance with each Section 4s Implementing Regulation, as defined in § 3.1(f), applicable to them, in accordance with the terms of the Section 4s Implementing Regulation; *Provided, however,* that for the purposes of this paragraph (a)(1)(v) the term “compliance” includes the term “the ability to comply,” to the extent that a particular Section 4s Implementing Regulation may require demonstration of the ability to comply with a requirement thereunder.

(B) The filing of the Form 7-R and accompanying documentation by the applicant swap dealer or major swap participant authorizes the Commission to conduct on-site inspection of the applicant to determine compliance with the Section 4s Implementing Regulations applicable to it.

(C)(1) At any time prior to the latest effective date of the Swap Definitional Regulations, defined in § 3.1(g), any person may apply to be registered as a swap dealer or major swap participant.

(2) By no later than the latest effective date of the Swap Definitional Regulations, each person who is a swap dealer or major swap participant on that date must apply to be registered as a swap dealer or major swap participant, as the case may be.

(3) From and after the latest effective date of the Swap Definitional Regulations, each person who intends to engage in business as a swap dealer or major swap participant must apply to be registered as a swap dealer or major swap participant, as the case may be.

(D)(1) Where an applicant for registration as a swap dealer or major swap participant to whom the National Futures Association has provided notice of provisional registration under § 3.2(c)(3) fails to demonstrate compliance with a Section 4s Implementing Regulation, the National Futures Association will notify the applicant that its application is deficient, whereupon the applicant must withdraw its registration application, it must not engage in any new activity as a swap dealer or major swap participant, as the case may be, and the applicant shall cease to be provisionally registered; *Provided*, that in the event the applicant fails to withdraw its registration application or cure the deficiency within 90 days following receipt of notice from the National Futures Association that its application is deficient, the application will be deemed withdrawn and thereupon its provisional registration shall cease; *Provided further*, that upon written request by the applicant submitted to the Commission, the Commission may in its discretion extend the time by which the applicant must cure the deficiency.

(2) The provisions of the foregoing paragraph (a)(1)(v)(D)(1) of this section shall supplement and be in addition to any other activities in which the National Futures Association engages under the Act and Commission regulations in connection with processing an application for registration as a swap dealer or major swap participant.

(E) Unless specifically reserved in the applicable swap documentation, no withdrawal, deemed withdrawal, cessation or revocation of registration as a swap dealer or major swap participant pursuant to paragraph (a)(1)(v), (b), or (d) of this section shall constitute a termination event, force majeure, an illegality, increased costs, a regulatory change, or a similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, re-

negotiate, modify, amend or supplement one or more transactions under the swap.

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1)(i) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose: *Provided, however*, that if such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) or has a current Form 8-R on file with the Commission or the National Futures Association, the fingerprints of that principal do not need to accompany the Form 7-R.

(3) *Notice registration as a futures commission merchant or introducing broker for certain securities brokers or dealers.* (i) Any broker or dealer that is registered with the Securities and Exchange Commission may be registered as a futures commission merchant or introducing broker, as applicable, by following such procedures for notice registration as may be specified by the National Futures Association, if—

(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;

(B) The registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

(C) The broker or dealer is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(ii) The registration will be effective upon the filing of the notice prescribed by the National Futures Association in accordance with the instructions thereto.

(b) *Duration of registration.* (1) A person registered as a futures commission

merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Upon effectiveness of any revocation or withdrawal of registration, such person will immediately be prohibited from engaging in new 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.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant in accordance with § 1.10(j) of this chapter will have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

(c) *Exemption from registration for certain persons*—(1) *Definitions*. For purposes of this paragraph (c), the following terms shall have the meanings set forth below.

(i) *Covered transaction* means a commodity interest transaction, as defined in § 1.3 of this chapter, executed bilaterally or made on or subject to the rules of any designated contract market or registered swap execution facility.

(ii) *Foreign located person* means a person located outside the United States, its territories, or possessions.

(iii) *International financial institution* means the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, the European Stability Mechanism, the North American Development Bank, those institutions defined as “international financial institutions” in 22 U.S.C. 262r(c)(2), those institutions defined as “multilateral development banks” in Article 1(5(a)) of Regulation (EU) No. 648/2012 of the Eu-

ropean Parliament and of the Council on OTC Derivative Transactions, Central Counterparties and Trade Repositories, their agencies and pension plans, and any other similar international organizations, and their agencies and pension plans.

(2) *Exempt futures commission merchants*—(i) *Proprietary accounts*. A person trading solely for proprietary accounts, as defined in § 1.3 of this chapter, is not required to register as a futures commission merchant; *provided*, that such person remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.

(ii) *Foreign located persons*. (A) A foreign located person engaging in the activity of a futures commission merchant, as defined in § 1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register in such capacity; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(B) A foreign located person acting in accordance with paragraph (c)(2)(ii)(A) of this section is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered futures commission merchant or any person required to be so registered.

(3) *Exempt introducing brokers*—(i) *Foreign located persons*. (A) A foreign located person engaged in the activity of an introducing broker, as defined in § 1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register in such capacity; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives

clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(B) A foreign located person acting in accordance with paragraph (c)(3)(i)(A) of this section is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered introducing broker or any person required to be so registered.

(ii) *Exempt foreign brokers.* (A) A foreign located person that is exempt from registration as a futures commission merchant in accordance with §30.10 of this chapter is not required to register as an introducing broker in accordance with section 4d of the Act if:

(1) Such person is affiliated with a futures commission merchant registered in accordance with section 4d of the Act;

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

(3) 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

(4) 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.

(B) For the purposes of this paragraph, a person shall be affiliated with a futures commission merchant if such a person owns 50 percent or more of the futures commission merchant, is owned 50 percent or more by the futures commission merchant, or is owned 50 percent or more by a third person that also owns 50 percent or more of the futures commission merchant.

(4) *Exempt commodity trading advisors.*

(i) A foreign located person engaging in the activity of a commodity trading advisor, as defined in §1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register in such capacity; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(ii) A foreign located person acting in accordance with paragraph (c)(4)(i) of this section remains subject to section 4c of the Act, but otherwise is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered commodity trading advisor or any person required to be so registered.

(5) *Exempt commodity pool operators.*

(i) A foreign located person engaged in the activity of a commodity pool operator, as defined in §1.3 of this chapter, in connection with any covered transaction is not required to register in such capacity, when such covered transactions are executed on behalf of a commodity pool, the participants of which are all foreign located persons or international financial institutions; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives

clearing organization and the commodity pool that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(ii) With respect to paragraph (c)(5)(i) of this section, initial capital contributed to a commodity pool by an affiliate, as defined by § 4.7(a)(1)(i) of this chapter, of the pool's commodity pool operator shall not be considered for purposes of determining whether such commodity pool operator is executing commodity interest transactions on behalf of a commodity pool, the participants of which are all foreign located persons; *provided*, that:

(A) The affiliate is not a natural person;

(B) The affiliate and its principals are not barred or suspended from participating in commodity interest markets in the United States, its territories or possessions; and

(C) Interests in the affiliate are not marketed as providing access to trading in commodity interest markets in the United States, its territories or possessions.

(iii) A commodity pool operated by a foreign located person shall be considered to be operated in accordance with the terms of paragraph (c)(5)(i) of this section, if:

(A) The commodity pool is organized and operated outside of the United States, its territories or possessions;

(B) The commodity pool's offering materials and any underwriting or distribution agreements include clear, written prohibitions on the commodity pool's offering to participants located in the United States and on U.S. ownership of the commodity pool's participation units;

(C) The commodity pool's constitutional documents and offering materials:

(1) are reasonably designed to preclude persons located in the United States from participating therein; and

(2) include mechanisms reasonably designed to enable its operator to exclude any persons located in the United States that attempt to participate in

the offshore pool, notwithstanding those prohibitions;

(D) The commodity pool operator exclusively uses non-U.S. intermediaries for the distribution of participations in the commodity pool;

(E) The commodity pool operator uses reasonable investor due diligence methods at the time of sale to preclude persons located in the United States from participating in the commodity pool; and

(F) The commodity pool's participation units are directed and distributed to participants outside the United States, including by means of listing and trading such units on secondary markets organized and operated outside of the United States, and in which the commodity pool operator has reasonably determined participation by persons located in the United States is unlikely.

(iv) Utilizing the relief under paragraph (c)(5)(i) of this section for a qualifying commodity pool will not affect the ability of a person to register with the Commission as a commodity pool operator, or to qualify for, rely upon, or claim other relief from regulation as such by the Commission, with respect to the operation of commodity pools or trading vehicles not otherwise eligible for the relief offered in this section.

(v) A person acting in accordance with paragraph (c)(5)(i) of this section remains subject to section 4o of the Act, but otherwise is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any person registered in such capacity, or any person required to be so registered.

(6) *Associated persons of swap dealers.* In determining whether a person is a swap dealer, the activities of a registered swap dealer with respect to which such person is an associated person shall not be considered.

(d) On a date to be established by the National Futures Association, and in accordance with procedures established by the National Futures Association, each registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity

pool operator, commodity trading advisor, or leverage transaction merchant shall, on an annual basis, review and update registration information maintained with the National Futures Association. The failure to complete the review and update within thirty days following the date established by the National Futures Association shall be deemed to be a request for withdrawal from registration, which shall be processed in accordance with the provisions of § 3.33(f).

(Approved by the Office of Management and Budget under control number 3038–0023)

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§ 3.11 Registration of floor brokers and floor traders.

(a) *Application for registration.* (1) Application for registration as a floor broker or floor trader must be on Form 8–R, if as an individual, or Form 7–R, if as a non-natural person, and must be completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 7–R filed in accordance with this paragraph (a) must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each individual who is a principal of the applicant, and each individual responsible for entry of orders from that applicant's own account. Each Form 8–R filed in accordance with this paragraph (a) must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association, except that a fingerprint card need not be filed by any applicant who has a current Form 8–R on file with the Commission or the National Futures Association.

(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 or registered as a swap execution facility 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 or swap execution facility 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 and swap execution facilities have ceased: Provided, that if a floor broker or floor trader whose trading privileges on all contract markets and swap execution facilities have ceased for reasons unrelated to any Commission action or any contract market or swap execution facility 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 or swap execution facility where such person 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 7–R, Form 8–R or change to Form 7–R or 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 such person 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 and swap execution facility that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader,