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controlling influence over the entity's activities that are subject to regulation by the Commission; 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.

(b) *Current.* As used in this subpart, a Form 8-R is current if, subsequent to the filing of that form and continuously thereafter, the registrant or principal has been either registered or affiliated with a registrant as a principal.

(c) *Sponsor.* Sponsor means the futures commission merchant, retail foreign exchange dealer, introducing

broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by §3.12 of this part for the registration of an associated person of such sponsor.

(d)–(e) [Reserved]

(f) *Section 4s Implementing Regulation.* Section 4s Implementing Regulation means a regulation the Commission issues pursuant to section 4s(e), 4s(f), 4s(g), 4s(h), 4s(i), 4s(j), 4s(k) or 4s(l) of the Act.

(g) *Swap Definitional Regulation.* Swap Definitional Regulation means a regulation the Commission issues to further define the term "swap dealer," "major swap participant" or "swap" in section 1a(49), 1a(33) or 1a(47) of the Act, respectively, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(h) *Swaps activities.* Swaps activities means, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.

(i) *Board of directors.* Board of directors means the board of directors, board of governors, or equivalent governing body of a registrant.

(j) *Senior officer.* Senior officer means the chief executive officer or other equivalent officer of a registrant.

[49 FR 5521, Feb. 13, 1984, and 49 FR 8217, Mar. 5, 1984, as amended at 49 FR 39530, Oct. 9, 1984; 57 FR 23144, June 2, 1992; 66 FR 53518, Oct. 23, 2001; 72 FR 63979, Nov. 14, 2007; 75 FR 55424, Sept. 10, 2010; 77 FR 2626, Jan. 19, 2012; 77 FR 3590, Jan. 25, 2012; 77 FR 20200, Apr. 3, 2012; 77 FR 51903, Aug. 28, 2012; 83 FR 43522, Aug. 27, 2018]

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

(a) Except as otherwise provided in any rule, regulation or order of the Commission, the registration functions of the Commission set forth in subpart A, subpart B and subpart C of this part shall be performed by the National Futures Association, in accordance with

such rules, consistent with the provisions of the Act and this part, applicable to registrations granted under the Act that the National Futures Association may adopt and are approved by the Commission pursuant to section 17(j) of the Act.

(b) Notwithstanding any other provision of this part, the original of any registration form, any schedule or supplement thereto, any fingerprint card or other document required by this part to be filed with both the Commission and the National Futures Association, may be filed with either the Commission or the National Futures Association if:

(1) A legible, accurate, and complete photocopy of that form, schedule, supplement, fingerprint card, or other document is filed simultaneously with the National Futures Association or the Commission, respectively, and

(2) Such photocopy contains an original signature and date in each place where such signature and date is required on the original form, schedule, supplement, fingerprint card, or other document.

(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 and swap execution facility 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.

(1) If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the sponsor that only a temporary license has been granted.

(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 or swap execution facility that has granted the applicant trading privileges that only a temporary license has been granted.

(3)(i) If an applicant for registration as a swap dealer or major swap participant pursuant to § 3.10(a)(1)(v) files a Form 7-R and a Form 8-R and finger-

print card for each natural person who is a principal of the applicant, accompanied by such documentation as may be required to demonstrate compliance with each of the Section 4s Implementing Regulations, as defined in § 3.1(f), as are applicable to it, in accordance with the terms of the Section 4s Implementing Regulations, the National Futures Association shall notify the swap dealer or major swap participant, as the case may be, that it is provisionally registered.

(ii) Subsequent to providing notice of provisional registration to an applicant for registration as a swap dealer or major swap participant, the National Futures Association shall determine whether the documentation submitted pursuant to § 3.10(a)(1)(v) by the applicant demonstrates compliance with the Section 4s Implementing Regulation to which it pertains; *Provided*, that where the National Futures Association has notified the applicant that it is provisionally registered, the applicant must supplement its registration application by providing such documentation as may be required to demonstrate compliance with each Section 4s Implementing Regulation that the Commission issues subsequent to the date the National Futures Association notifies the applicant that it is provisionally registered.

(iii) On and after the date on which the National Futures Association confirms that the applicant for registration as a swap dealer or major swap participant has demonstrated its initial compliance with the applicable requirements of each of the Section 4s Implementing Regulations and all other applicable registration requirements under the Act and Commission regulations, the provisional registration of the applicant shall cease and it shall be registered as a swap dealer or major swap participant, as the case may be.

(d) Any registration form, any schedule or supplement thereto, any fingerprint card or other document required by this part or any rule of the National Futures Association to be filed with the National Futures Association shall be deemed for all purposes to have been

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filed with, and to be the official record of, the Commission.

[49 FR 39530, Oct. 9, 1984, as amended at 53 FR 8431, Mar. 15, 1988; 54 FR 19558, May 8, 1989; 67 FR 38874, June 6, 2002; 77 FR 2626, Jan. 19, 2012; 77 FR 51904, Aug. 28, 2012]

§ 3.3 Chief compliance officer.

(a) *Designation.* Each futures commission merchant, swap dealer, and major swap participant shall designate an individual to serve as its chief compliance officer, and provide the chief compliance officer with the responsibility and authority to develop, in consultation with the board of directors or the senior officer, appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations relating to the swap dealer's or major swap participant's swaps activities, or to the futures commission merchant's business as a futures commission merchant and to ensure compliance with the Act and Commission regulations relating to the swap dealer's or major swap participant's swaps activities, or to the futures commission merchant's business as a futures commission merchant.

(1) The chief compliance officer shall report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant. The board of directors or the senior officer shall appoint the chief compliance officer, shall approve the compensation of the chief compliance officer, and shall meet with the chief compliance officer at least once a year and at the election of the chief compliance officer.

(2) Only the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant may remove the chief compliance officer.

(b) *Qualifications.* The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual disqualified, or subject to disqualification, from registration under section 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(c) *Submission with registration.* Each application for registration as a futures commission merchant under

§ 3.10, a swap dealer under § 23.21, or a major swap participant under § 23.21, must include a designation of a chief compliance officer by submitting a Form 8-R for the chief compliance officer as a principal of the applicant pursuant to § 3.10(a)(2).

(d) *Chief compliance officer duties.* The chief compliance officer's duties shall include, but are not limited to:

(1) Administering each of the registrant's policies and procedures relating to its business as a futures commission merchant, swap dealer, or major swap participant that are required to be established pursuant to the Act and Commission regulations;

(2) In consultation with the board of directors or the senior officer, taking reasonable steps to resolve material conflicts of interest relating to the registrant's business as a futures commission merchant, swap dealer, or major swap participant that may arise;

(3) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to the registrant's business as a futures commission merchant, swap dealer or major swap participant;

(4) Taking reasonable steps to ensure the registrant establishes, maintains, and reviews written policies and procedures reasonably designed to remediate noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reporting to the Commission and other appropriate authorities, or complaint that can be validated;

(5) Taking reasonable steps to ensure the registrant establishes written procedures reasonably designed for the handling, management response, remediation, retesting, and resolution of noncompliance issues; and

(6) Preparing and signing the annual report required under paragraphs (e) and (f) of this section.

(e) *Annual report.* The chief compliance officer annually shall prepare a written report that covers the most recently completed fiscal year of the futures commission merchant, swap dealer, or major swap participant. The annual report shall, at a minimum, contain a description of: