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§ 2.2 Authority to affix seal.

(a) The following officials of the Commodity Futures Trading Commission are authorized to affix the Seal to appropriate documents and other materials of the Commission for all purposes including those authorized by 28 U.S.C. 1733(b) (relating to authenticated copies of agency documents used as evidence): The Chairman and all Commissioners, the General Counsel, the Executive Director, the Directors of Divisions, and the Secretariat.

(b) The officials named in paragraph (a) of this section, may redelegate, and authorize redelegation of this authority, except that the Secretary may redelegate this authority only to the Deputy Secretary.

[41 FR 9552, Mar. 5, 1976, as amended at 51 FR 37177, Oct. 20, 1986]

§ 2.3 Prohibitions against misuse of seal.

(a) Fraudulently or wrongfully affixing or impressing the Seal to or upon any certificate, instrument, document or paper or with knowledge of its fraudulent character, or with wrongful or fraudulent intent, using, buying, procuring, selling or transferring to another any such paper is punishable under section 1017 of title 18, U.S. Code.

(b) Falsely making, forging, counterfeiting, mutilating, or altering the Seal, or knowingly using a fraudulent or altered Seal or possessing any such

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Seal knowingly is punishable under section 506 of title 18, U.S. Code.

§ 2.4 Employee Recreation Association's use of Commission seal.

(a) As a specific exception to the provisions of 17 CFR 2.2 and 2.3, the Commodity Futures Trading Commission Employee Recreation Association ("Association") is hereby authorized to use the Commission seal as an imprint upon sport apparel (e.g., hats, clothing, accessories, etc.) and novelty items (e.g., office mugs, lanyards, badge holders, stationary items, among other);

(b) The Association may sell or distribute above said items imprinted with the Commission seal to members of the Association or others to meet its fundraising goals and/or in conjunction with its sports, social or similar events.

[72 FR 29247, May 25, 2007]

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AUTHORITY: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n,

6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23.

SOURCE: 45 FR 80491, Dec. 5, 1980, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3 appear at 89 FR 71806, Sept. 4, 2024.

Subpart A—Registration

§ 3.1 Definitions.

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

(1) If the entity is organized as a sole proprietorship, the proprietor and chief compliance officer; if a partnership, any general partner and chief compliance officer; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, chief compliance officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, chief compliance officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

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

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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:

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(1) The written policies and procedures of the futures commission merchant, swap dealer, or major swap participant described in paragraph (d) of this section, including the code of ethics and conflicts of interest policies;

(2) The futures commission merchant's, swap dealer's, or major swap participant's assessment of the effectiveness of its policies and procedures relating to its business as a futures commission merchant, swap dealer or major swap participant;

(3) Areas for improvement, and recommended potential or prospective changes or improvements to its compliance program and resources devoted to compliance;

(4) The financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission regulations relating to its business as a futures commission merchant, swap dealer or major swap participant, including any material deficiencies in such resources;

(5) Any material noncompliance issues identified and the corresponding action taken; and

(6) Any material changes to compliance policies and procedures during the coverage period for the report.

(f) *Furnishing the annual report and related matters*—(1) *Furnishing the annual report.* (i) Prior to furnishing the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or senior officer of the futures commission merchant, swap dealer, or major swap participant for its review.

(ii) If the futures commission merchant, swap dealer, or major swap participant has established an audit committee (or an equivalent body), then the chief compliance officer shall furnish the annual report to the audit committee (or equivalent body) not later than its next scheduled meeting after the annual report is furnished to the Commission, but in no event more than 90 days after the applicable date specified in paragraph (f)(2) of this section for furnishing the annual report to the Commission.

(iii) A written record of transmittal of the annual report to the board of directors or the senior officer, and audit committee, if applicable, shall be made

and maintained in accordance with § 1.31 of this chapter.

(2) *Furnishing the annual report to the Commission.* (i) Except as provided in paragraph (f)(2)(ii) of this section, the annual report shall be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant.

(ii) The annual report of a swap dealer or major swap participant that is eligible to comply with a substituted compliance regime for paragraph (e) of this section pursuant to a comparability determination of the Commission may be furnished to the Commission electronically up to 15 days after the date on which the comparable annual report must be completed under the requirements of the applicable substituted compliance regime. If the substituted compliance regime does not specify a date by which the comparable annual report must be completed, then the annual report shall be furnished to the Commission by the date specified in paragraph (f)(2)(i) of this section.

(3) *Certification.* The report shall include a certification by the chief compliance officer or chief executive officer of the registrant that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete in all material respects.

(4) *Amending the annual report.* The futures commission merchant, swap dealer, or major swap participant shall promptly furnish an amended annual report if material errors or omissions in the report are identified. An amendment must contain the certification required under paragraph (f)(3) of this section.

(5) *Extensions.* A futures commission merchant, swap dealer, or major swap participant may request from the Commission an extension of time to furnish its annual report, provided the registrant's failure to timely furnish the report could not be eliminated by the registrant without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(6) *Incorporation by reference and related registrants*—(i) *Prior reports.* A futures commission merchant, swap dealer, or major swap participant may incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period to the Commission.

(ii) *Dual registrants.* If a futures commission merchant, swap dealer, or major swap participant is registered in more than one capacity with the Commission, an annual report submitted as one registrant may incorporate by reference sections in the annual report furnished within the current or immediately preceding reporting period as the other registrant. A dual registrant may submit one annual report that addresses the requirements set forth in paragraphs (e), (f)(1) and (f)(3) of this section with respect to each registration capacity.

(iii) *Affiliated registrants.* If a futures commission merchant, swap dealer, or major swap participant controls, is controlled by, or is under common control with, one or more other futures commission merchants, swap dealers, or major swap participants, and each of the affiliated registrants must submit an annual report, an affiliated registrant may incorporate by reference in its annual report sections from an annual report prepared by any of its affiliated registrants furnished within the current or immediately preceding reporting period. Affiliated registrants may submit one annual report that addresses the requirements set forth in paragraphs (e), (f)(1) and (f)(3) of this section with respect to each affiliated registrant.

(g) *Recordkeeping.* (1) The futures commission merchant, swap dealer, or major swap participant shall maintain:

(i) A copy of the registrant's policies and procedures reasonably designed to ensure compliance with the Act and Commission regulations;

(ii) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (e) of this section; and

(iii) Any records relevant to the annual report, including, but not limited

to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(2) All records or reports that a futures commission merchant, swap dealer, or major swap participant are required to maintain pursuant to this section shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of the applicable prudential regulator, as defined in 1a(39) of the Act.

(h) *Delegation of authority.* The Commission hereby delegates to the Director of the Market Participants Division, or such other employee or employees as the Director may designate, the authority to grant extensions of time, as set forth in paragraph (f)(5) of this section. Notwithstanding such delegation, in any case in which a Commission employee delegated authority under this paragraph believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an extension of time should be granted. The delegation of authority in this paragraph shall not prohibit the Commission, at its election, from exercising the authority set forth in paragraph (f)(5) of this section.

[77 FR 20200, Apr. 3, 2012, as amended at 78 FR 68645, Nov. 14, 2013; 81 FR 80566, Nov. 16, 2016; 83 FR 43522, Aug. 27, 2018]

§ 3.4 Registration in one capacity not included in registration in any other capacity.

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, floor broker, floor trader of any commodity for future delivery, commodity trading advisor, commodity pool operator, introducing broker, leverage transaction merchant, and associated person (other than an associated person of a swap 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 Se-

curities 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 § 3.13 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)(I) 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, renegotiate, 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 European Parliament and of the Council on OTC Derivative Transactions, Central Counterparties and Trade Repositories, their agencies and pension plans, and any other similar inter-

national 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 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 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

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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) 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

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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)

[45 FR 80491, Dec. 5, 1980, as amended at 47 FR 27551, June 25, 1982; 49 FR 5522, Feb. 13, 1984; 49 FR 39530, Oct. 9, 1984; 57 FR 23144, June 2, 1992; 66 FR 43082, Aug. 17, 2001; 66 FR 53518, Oct. 23, 2001; 67 FR 38874, June 6, 2002; 67 FR 41166, June 17, 2002; 72 FR 35920, July 2, 2007; 72 FR 63979, Nov. 14, 2007; 73 FR 54071, Sept. 18, 2008; 75 FR 55424, Sept. 10, 2010; 77 FR 2626, Jan. 19, 2012; 77 FR 51904, Aug. 28, 2012; 83 FR 7995, Feb. 23, 2018; 85 FR 78738, Dec. 7, 2020; 89 FR 78810, Sept. 26, 2024]

§ 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 reg-

istered 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, must provide notice in accordance with § 3.31(d) after such person's trading

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privileges on such contract market or swap execution facility have ceased.

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

[77 FR 51905, Aug. 28, 2012, as amended at 83 FR 1545, Jan. 12, 2018]

§ 3.12 Registration of associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), or (i), of this section or is exempt from such registration pursuant to paragraph (h) of this section.

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

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

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless a person duly authorized by the sponsor certifies that:

(i) It is the intention of the sponsor to hire or otherwise employ the applicant as an associated person and that it will do so within thirty days after the receipt of the notification provided in accordance with paragraph (c)(4) of this section and that the applicant will not be permitted to engage in any activity requiring registration as an associated person until the applicant is registered as such in accordance with this section;

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8-R which relate to the applicant's education and employment history during the preceding three years.

(iii) To the best of the sponsor's knowledge, information, and belief, all of the publicly available information supplied by the applicant on Form 8-R is accurate and complete: *Provided*, That it is unlawful for the sponsor to make the certification required by this paragraph (c)(1)(iii) if the sponsor knew or should have known that any of that information is not accurate and complete; and

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8-R.

(3) Each Form 8-R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association.

(4) When the Commission or the National Futures Association determines that an applicant for registration as an associated person is not unfit for such registration, it will notify the sponsor

that has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

(d) *Special temporary licensing and registration procedures for certain persons—*

(1) *Registration terminated within the preceding 60 days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding 60 days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon filing by that sponsor with the National Futures Association a Form 8-R, completed in accordance with the instructions thereto and, if applicable, a Supplemental Sponsor Certification Statement filed on behalf of the new sponsor (who must meet the requirements set forth in §3.60(b)(2)(i)(A) and (B)) stating that the new sponsor will supervise the applicant in accordance with conditions identical to those agreed to by the previous sponsor, which includes certifications stating:

(i) That such person has been hired or is otherwise employed by that sponsor;

(ii) That such person's registration as an associated person in any capacity is not suspended or revoked;

(iii) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (d);

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §3.55, §3.56 or §3.60 or if, within the preceding 12 months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §3.51 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith; and

(v) That the sponsor has received a copy of the notice of the institution of a proceeding if the applicant has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against the appli-

cant as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph.

(2) Any temporary license granted pursuant to paragraph (d)(1) of this section shall be terminated immediately upon notice to the sponsor of the person granted the temporary license that, within 20 days following the date the temporary license was issued, the National Futures Association has not received the applicant's fingerprints.

(3) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§3.42 and 3.43.

(4) The certifications permitted by paragraphs (d)(1)(i) and (v) of this section must be filed by a person duly authorized by the sponsor. The certifications permitted by paragraphs (d)(1)(ii)–(iv) must be filed by the applicant for registration as an associated person.

(e) *Retention of records.* The sponsor must retain in accordance with §1.31 of this chapter such records as are necessary to support the certifications required by this section.

(f) *Reporting of dual and multiple associations.* (1)(i) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in §3.60(b)(2)(i) (A) and (B)) files with the National Futures Association a Form 8-R in accordance with the instructions thereto.

(ii) NFA shall notify each sponsor of the associated person that the associated person has applied to become associated with another sponsor.

(iii) Each sponsor of the associated person shall supervise that associated person and each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

(A) Solicitation or acceptance of customers' orders,

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(B) Solicitation of funds, securities, or property for a participation in a commodity pool,

(C) Solicitation of a client's or prospective client's discretionary account,

(D) Solicitation or acceptance of leverage customers' orders for leverage transactions, and

(E) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

(2) Upon receipt by the National Futures Association of a Form 8-R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

(3) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of paragraphs (f)(1) and (f)(2) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in accordance with the requirements of paragraphs (f)(1) and (f)(2) of this section.

(4) If a person is associated with a futures commission merchant, with a retail foreign exchange dealer, or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant, retail foreign exchange dealer or introducing broker and all such customers' accounts solicited or accepted by the associated per-

son are carried by the futures commission merchant, retail foreign exchange dealer or introduced by the introducing broker with which the associated person is associated, such a person shall be deemed to be associated solely with the futures commission merchant, retail foreign exchange dealer or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

(5)(i)(A) A person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person of a swap dealer or major swap participant if the swap dealer or major swap participant meets the requirements set forth in § 3.60(b)(2)(i)(A).

(B) A person who is already associated as an associated person of a swap dealer or major swap participant may become registered as an associated person of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the person intends to associate meets the requirements set forth in § 3.60(b)(2)(i)(A) and (B).

(ii) Each sponsor and each swap dealer and/or major swap participant with whom the person is associated shall supervise that associated person, and each sponsor and each swap dealer and/or major swap participant is jointly and severally responsible for the conduct of the associated person with respect to the:

(A) Solicitation or acceptance of customer orders,

(B) Solicitation of funds, securities or property for a participation in a commodity pool,

(C) Solicitation of a client's or prospective client's discretionary account,

(D) Solicitation or acceptance of leverage customers' orders for leverage transactions,

(E) Solicitation or acceptance of swaps, and

(F) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, swap dealer, or major swap participant with which the associated person is associated.

(g) *Petitions for exemption.* Any person adversely affected by the operation of this section may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that an applicant should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

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

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

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

(iii) The chief operating officer, general partner or other person in the supervisory chain-of-command, *provided* the futures commission merchant, re-

tail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity for customers as no more than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(1)(iii)(C) or (h)(1)(iii)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to:

(1) Solicit or accept customers', retail forex customers', or leverage customers' orders,

(2) Solicit a client's or prospective client's discretionary account,

(3) Solicit funds, securities or property for a participation in a commodity pool, or

(4) Exercise any line supervisory authority over those persons so engaged;

(B) Such supervisory person has no authority with respect to hiring, firing or other personnel matters involving persons engaged in activities subject to regulation under the Act;

(C) Another person (or persons) designated therein, who is registered as an associated person(s) or who has applied for registration as an associated person(s) and is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder

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or the rules of a self-regulatory organization, holds and exercises full and final supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm; and

(D) If the person (or persons) so designated in accordance with paragraph (h)(1)(iii)(C) of this section ceases to have the authority referred to therein, the firm will notify the National Futures Association within twenty days of such occurrence by means of a subsequent resolution which resolution must also include the name of another associated person (or persons) who has been vested with full supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm in the event that all of those previously designated in accordance with paragraph (h)(1)(iii)(C) of this section have been relieved of such authority. Subsequent changes in supervisory authority shall be reported in the same manner; or

(iv) Engaged in any activity as an associated person, as defined in § 1.3 of this chapter, from a location outside the United States, its territories or possessions, and limits such activities to customers located outside the United States, its territories or possessions.

(2) A person is not required to register as an associated person of a commodity trading advisor if that person is:

(i) Registered as a commodity trading advisor, if that person is associated with a commodity trading advisor; or

(ii) Exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or is associated with a person who is so exempt from registration: *Provided*, That the provisions of paragraph (h)(2)(ii) of this section shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for or on behalf of a commodity trading advisor which is:

(A) Not exempt from registration pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or

(B) Registered as a commodity trading advisor notwithstanding the availability of that exemption.

(3) A person is not required to register as an associated person of a commodity pool operator if that person is:

(i) Registered as a commodity pool operator, if that person is associated with a commodity pool operator;

(ii) Exempt from registration as a commodity pool operator pursuant to the provisions of § 4.13 of this chapter or is associated with a person who is so exempt from registration: *Provided*, That the provisions of paragraph (h)(3)(ii) of this section shall not apply to the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity pool operator which is

(A) Not exempt from registration pursuant to the provisions of § 4.13 of this chapter or

(B) Registered as a commodity pool operator notwithstanding the availability of that exemption; or

(iii) Where a commodity pool is operated or to be operated by two or more commodity pool operators, registered as an associated person of one of the pool operators of the commodity pool in accordance with the provisions of paragraphs (c), (d), (f), or (i) of this section: *Provided*, That each such commodity pool operator shall be jointly and severally liable for the conduct of that associated person in the solicitation of funds, securities, or property for participation in the commodity pool, or the supervision of any person or persons so engaged, regardless of whether that associated person is registered as an associated person of each such commodity pool operator.

(i) *Special registration or temporary licensing procedures when previous sponsor's registration ceases.* (1) Any person whose registration as an associated person in any capacity was not subject to conditions or restrictions, and was terminated within the preceding sixty days because the previous sponsor's registration was revoked or withdrawn, and who becomes associated with a new sponsor, will be registered as an associated person of such new sponsor upon the mailing by that new sponsor to the

National Futures Association of written certifications stating:

(i) That such person has been hired or is otherwise employed by that sponsor;

(ii) That such person's registration as an associated person in any capacity is not suspended or revoked;

(iii) That such person is eligible to be registered in accordance with paragraph (i) of this section;

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §3.55, 3.56 or 3.60 or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §3.51 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified, in accordance with paragraph (i)(1)(iv) of this section, that there is a proceeding pending against the applicant as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph; and

(vi) That the new sponsor will be responsible for supervising all activities of the person in connection with the sponsor's business as a registrant under the Act. *Provided, however,* That if such person's prior registration as an associated person was subject to conditions or restrictions, the new sponsor (who must meet the requirements set forth in §3.60(b)(2)(i) (A) and (B) of this part) must also file a signed Supplemental Sponsor Certification Statement that contains conditions identical to those agreed to by the original sponsor and, in such case, the person will be granted a temporary license, subject to the provisions of §§3.41, 3.42 and 3.43 of this part.

(2) The certifications required by paragraphs (i)(1)(i), (i)(1)(v), and (i)(1)(vi) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the proprietor, if a sole proprietorship. The certifications required by paragraphs (i)(1)(ii)–(iv) of

this section must be signed and dated by the applicant for registration as an associated person.

(3) A person who is registered in accordance with the provisions of paragraph (i)(1) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in connection with the requirements of paragraph (i)(1) of this section.

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

[45 FR 80491, Dec. 5, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §3.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§§ 3.13–3.20 [Reserved]

§3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by this part to submit a fingerprint card may file, or cause to be filed, in lieu of such card:

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

(2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days, provided that the provisions of this paragraph (a)(2)

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shall not be applicable to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration; or

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

(b) Each photocopy and statement filed in accordance with the provisions of paragraph (a)(1) or (a)(2) of this section must be signed and dated. Such signature shall constitute a certification by that individual that the photocopy or statement is accurate and complete and must be made by:

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

(2) With respect to fingerprints of a floor broker or individual floor trader: The applicant for registration; and with respect to fingerprints of each individual who is responsible for entry of orders from the account of a floor trader that is a non-natural person, the applicant for registration, or

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

(c) *Outside directors.* Any futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of § 3.10(a)(2), file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) Is not engaged in:

(i) The solicitation or acceptance of customers' orders or retail forex customers' orders,

(ii) The solicitation of funds, securities or property for a participation in a commodity pool,

(iii) The solicitation of a client's or prospective client's discretionary account,

(iv) The solicitation of leverage customers' orders for leverage transactions,

(v) The solicitation or acceptance of a swap agreement;

(2) Does not regularly have access to the keeping, handling or processing of:

(i) Transactions involving "commodity interests," as that term is defined in § 1.3;

(ii) Customer funds, retail forex customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or

(3) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (c)(1) and (c)(2) of this section; and

(4) The Notice Pursuant to Rule 3.21(c) shall also include:

(i) The name of the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity trading advisor, commodity pool operator, floor trader that is a non-natural person, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

(ii) The nature of the duties of the outside director for whom exemption under paragraph (c) of this section is sought;

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

(iv) The reasons why the outside director believes he should be exempted from the fingerprint requirement and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought.

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(d) A firm that has filed a Notice Pursuant to Rule 3.21(c) with respect to an outside director described therein must file with the National Futures Association on behalf of such outside director a Form 8–R, completed in accordance with the instructions thereto and executed by the outside director. The exemption provided for in paragraph (c) of this section is limited solely to the outside director's fingerprint requirement and does not affect any other duties or responsibilities of the firm or the outside director under the Act or the rules set forth in this chapter. In appropriate cases, the Commission and the National Futures Association may require further information from the firm with respect to any outside director referred to in a Notice Pursuant to Rule 3.21(c).

(e) *Foreign natural persons.* (1) For purposes of this paragraph (e):

(i) The term *foreign natural person* means any natural person who has not resided in the United States since reaching the age of 18 years.

(ii) The term *certifying firm* means:

(A) For any natural person that is a principal or associated person of a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker, or floor trader, such futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker, or floor trader; and

(B) For any natural person that is responsible for, or directs, the entry of orders from a floor broker's or floor trader's own account, such floor broker or floor trader.

(2) Any obligation in this part to provide a fingerprint card for a foreign natural person shall be deemed satisfied with respect to a certifying firm if:

(i) Such certifying firm causes a criminal history background check of such foreign natural person to be performed; and

(ii) The criminal history background check:

(A) Is of a type that would reveal all matters listed under Sections 8a(2)(D) or 8a(3)(D), (E), or (H) of the Act relating to such foreign natural person;

(B) Does not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Act, other than those disclosed to the National Futures Association; and

(C) Is completed not more than one calendar year prior to the date that such certifying firm submits the certification described in paragraph (e)(2)(iii) of this section;

(iii) A person authorized by such certifying firm submits, in reliance on such criminal history background check, a certification by such certifying firm to the National Futures Association, that:

(A) States that the conditions of paragraphs (e)(2)(i) and (ii) of this section have been satisfied; and

(B) Is signed by a person authorized by such certifying firm to make such certification.

(3) The certifying firm shall maintain, in accordance with §1.31 of this chapter, records documenting that the criminal history background check performed pursuant to paragraph (e)(2)(i) of this section was completed and the results thereof.

[48 FR 35297, Aug. 3, 1983, as amended at 49 FR 5525, Feb. 13, 1984; 54 FR 19558, May 8, 1989; 57 FR 23148, June 2, 1992; 58 FR 19592, Apr. 15, 1993; 66 FR 53518, Oct. 23, 2001; 75 FR 55425, Sept. 10, 2010; 77 FR 2627, Jan. 19, 2012; 77 FR 51906, Aug. 28, 2012; 81 FR 18747, Apr. 1, 2016; 83 FR 7995, Feb. 23, 2018]

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Market Participants Division or Division of Enforcement or either Director's designee, or the National Futures Association may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a)(1) That derogatory information has come to the attention of the staff of the Commission or the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is

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unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice and requesting the person to provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation, or

(2) That the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and

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

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the person is unfit to become or to remain so registered.

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

[45 FR 8049, Dec. 5, 1980, as amended at 47 FR 27551, June 25, 1982; 49 FR 39532, Oct. 9, 1984; 53 FR 8433, Mar. 15, 1988; 57 FR 23148, June 2, 1992; 67 FR 62351, Oct. 7, 2002; 77 FR 51906, Aug. 28, 2012; 78 FR 22419, Apr. 16, 2013]

§§ 3.23–3.29 [Reserved]

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

(a) The address of each registrant, applicant for registration, and principal, as submitted on the application for registration (Form 7-R or Form 8-R) or as submitted on the biographical supplement (Form 8-R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association,

including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: Provided that the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to an associated person to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

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

[77 FR 51906, Aug. 28, 2012]

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

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a non-natural person or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Form 8-R that no longer renders accurate and current the information contained therein, with the exception of any change that requires withdrawal from registration under § 3.33 or any change resulting from an exchange disciplinary or access denial action. Each such correction shall be prepared and filed in accordance with the instructions thereto.

(2) Where a registrant has changed its form of organization to or from a sole proprietorship, the registrant must request withdrawal from registration in accordance with § 3.33.

(3) Where any person becomes a principal of an applicant or registrant subsequent to the filing of the applicant's or registrant's current Form 7-R:

(i) If the new principal is not a natural person, the registrant shall update such Form 7-R.

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

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

(c)(1) After the filing of a Form 8-R or updating a Form 8-R by or on behalf

of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

(i) The failure of that person to become associated with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor; or

(ii) The termination of the association of the associated person with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor.

(2) Each person registered as, or applying for registration as, a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a non-natural person, or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

(3) Any notice required by paragraph (c) of this section must be filed on Form 8-T or on a Uniform Termination Notice for Securities Industry Registration.

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

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such contract market or swap execution facility.

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

[45 FR 80491, Dec. 5, 1980, as amended at 47 FR 27551, June 25, 1982; 48 FR 35297, Aug. 3, 1983; 49 FR 5525, Feb. 13, 1984; 49 FR 39533, Oct. 9, 1984; 51 FR 34460, Sept. 29, 1986; 53 FR 8433, Mar. 15, 1988; 54 FR 19558, May 8, 1989; 58 FR 19592, Apr. 15, 1993; 66 FR 53518, Oct. 23, 2001; 67 FR 38875, June 6, 2002; 72 FR 63104, Nov. 8, 2007; 75 FR 55426, Sept. 10, 2010; 77 FR 2628, Jan. 19, 2012; 77 FR 51907, Aug. 28, 2012; 83 FR 1545, Jan. 12, 2018]

§ 3.33 Withdrawal from registration.

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

(1) The registrant has ceased, or has not commenced, engaging in activities requiring registration in such capacity;

(2) The registrant is exempt from registration in such capacity; or

(3) The registrant is excluded from the persons or any class of persons required to be registered in such capacity: *Provided*, That the National Futures Association or the Commission, as appropriate, may consider separately each capacity for which withdrawal is requested in acting upon such a request.

(b) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity trading advisor, commodity pool operator, floor trader that is a non-natural

person, or leverage transaction merchant must be made on Form 7-W, and a request for withdrawal from registration as a floor broker or individual floor trader must be made on Form 8-W, completed and filed with the National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by a person duly authorized by the registrant and must specify:

(1) The name of the registrant for which withdrawal is being requested;

(2) The registration capacities for which withdrawal is being requested;

(3) The name, address, and telephone number of the person who will have custody of the books and records of the registrant; the address where such books and records will be located; and a statement that such person is authorized to make them available in accordance with the requirements of § 1.31 of this chapter;

(4) The applicable basis under paragraph (a) of this section for requesting withdrawal for each capacity for which withdrawal is requested.

(5) If withdrawal is requested under paragraph (a)(2) or (a)(3) of this section, then, with respect to each capacity for which withdrawal is requested, the section of the Act, regulations, or other authority permitting the exemption or exclusion, and the circumstances which entitle the registrant to claim such exemption or exclusion.

(6) If a basis for withdrawal from registration under paragraph (a)(1) of this section is that the registrant has ceased engaging in activities requiring registration, then, with respect to each capacity for which the registrant has ceased such activities:

(i) That all customer, retail forex customer or option customer agreements, if any, have been terminated;

(ii) That all customer, retail forex customer or option customer positions, if any, have been transferred on behalf of customers or option customers or closed;

(iii) That all customer, retail forex customer or option customer cash balances, securities, or other property, if any, have been transferred on behalf of customers, retail forex customers or option customers or returned, and that

there are no obligations to customers, retail forex customers or option customers outstanding;

(iv) In the case of a commodity pool operator, that all interests in, and assets of, any commodity pool have been redeemed, distributed, or transferred, on behalf of the participants therein, and that there are no obligations to such participants outstanding;

(v) In the case of a leverage transaction merchant:

(A) Either that all leverage customer agreements, if any, and all leverage contracts have been terminated, and that all leverage customer cash balances, securities or other property, if any, have been returned, or

(B) Alternatively, that pursuant to Commission approval, the leverage contract obligations of the leverage transaction merchant have been assumed by another leverage transaction merchant and all leverage customer cash balances, securities or other property, if any, have been transferred to such leverage transaction merchant on behalf of leverage customers or returned, and that there are no obligations to leverage customers outstanding;

(vi) The nature and extent of any pending customer, retail forex customer, option customer, leverage customer, swap counterparty or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer, leverage customer, swap counterparty or commodity pool participant claims against the registrant;

(vii) In the case of a futures commission merchant or a retail foreign exchange dealer which is a party to a guarantee agreement, that all such agreements have been or will be terminated in accordance with the provisions of §1.10(j) of this chapter not more than thirty days after the filing of the request for withdrawal from registration;

(viii) In the case of a swap dealer, that the person will not engage in any new activity described in the definition of the term "swap dealer" in section 1a(49) of the Act, as such term may be further defined by the Commission; and

(ix) In the case of a major swap participant, that the person will not engage in any new activity described in the definition of the term "major swap participant" in section 1a(33) of the Act, as such term may be further defined by the Commission.

(c) Where a leverage transaction merchant is requesting withdrawal from registration in that capacity and the basis for withdrawal under paragraph (a)(1) of this section is that it has ceased engaging in activities requiring registration, the request for withdrawal must be accompanied by a form 2-FR which contains the information specified in §31.13(f) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

(d) [Reserved]

(e) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant on Form 7-W, and a request for withdrawal from registration as a floor broker or individual floor trader on Form 8-W, must be filed with the National Futures Association and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Market Participants Division, at the Commission's Washington, DC headquarters. In addition, any floor broker or individual floor trader requesting withdrawal from registration must file a copy of his or her Form 8-W with each contract market or swap execution facility that has granted him or her trading privileges, and any floor trader that is a non-natural person requesting withdrawal from registration must file a copy of its Form 7-W with each contract market or swap execution facility that has granted it trading privileges. Within three business days of any determination by the National Futures Association under §3.10(d) to treat the failure by a registrant to file an annual Form 7-R as a request for withdrawal, the National Futures Association shall send the

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Commission notice of that determination.

(f) A request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

(1) The Commission or the National Futures Association has instituted a proceeding to suspend or revoke such registration;

(2) The Commission or the National Futures Association imposes, or gives notice by mail which notice shall be complete upon mailing, that it intends to impose terms or conditions upon such withdrawal from registration;

(3) The Commission or the National Futures Association notifies the registrant by mail, which notice shall be complete upon mailing, or the registrant otherwise is notified that it is the subject of an investigation to determine, among other things, whether such registrant has violated, is violating, or is about to violate the Act, rules, regulations or orders adopted thereunder;

(4) The Commission or the National Futures Association requests from the registrant further information pertaining to its request for withdrawal from registration; or

(5) The Commission or National Futures Association determines that it would be contrary to the requirements of the Act, or of any rule, regulation or order thereunder, or to the public interest to permit such withdrawal from registration.

(g) Withdrawal from registration in one capacity does not constitute withdrawal from registration in any other capacity.

(h) Withdrawal from registration does not constitute a release from liability for any violation of the Act or of any rule, regulation, or order thereunder.

(Approved by the Office of Management and Budget under control number 3038-0008)

[46 FR 48917, Oct. 5, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.33, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

Subpart B—Temporary Licenses

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

(a) Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart:

(1) The National Futures Association may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the National Futures Association of:

(i) A Form 8-R, properly completed in accordance with the instructions thereto; and

(ii) The sponsor's certification required by § 3.12(c): *Provided, however*, that the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose must be filed with the National Futures Association within 20 days following the date the temporary license is issued; *and, provided further*, that failure to file the fingerprints within this period will result in the termination of the temporary license immediately upon notice to the applicant's sponsor that the National Futures Association has not received the applicant's fingerprints.

(2) The National Futures Association may grant a temporary license to any applicant for registration as a floor broker or individual floor trader upon the contemporaneous filing with the National Futures Association of:

(i) A Form 8-R, properly completed in accordance with the instructions thereto;

(ii) The fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose;

(iii) A Supplemental Sponsor Certification Statement executed by a sponsor meeting the requirements under § 3.60(b)(2)(i), if the applicant is subject to an order imposing conditions on the applicant's registration; and

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

(b) The failure of an applicant or the applicant's sponsor to respond to a request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or for the resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

(c) Subject to the provisions of § 3.42 and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations, and orders thereunder, an applicant for registration as an associated person who has received notification that a temporary license has been granted may act in the capacity of an associated person, an applicant for registration as a floor trader who has received written notification that a temporary license has been granted may act in the capacity of a floor trader, and an applicant for registration as a floor broker who has received written notification that a temporary license has been granted may act in the capacity of a floor broker.

[67 FR 38876, June 6, 2002, as amended at 77 FR 51908, Aug. 28, 2012]

§ 3.42 Termination.

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

(1) Five days after service upon the applicant of a notice by the Commission or the National Futures Association pursuant to § 3.60 of this part that the applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the association of the applicant for registration as an associated person with the registrant which filed the sponsor-

ship certification, or immediately upon loss of trading privileges by an applicant for registration as a floor broker or floor trader on all contract markets and swap execution facilities which filed the certification described in § 3.40;

(3) Immediately upon the withdrawal of the registration application pursuant to § 3.40;

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

(5) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act;

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

(7) Immediately upon the revocation or withdrawal of the registration of the applicant's sponsor; or

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

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

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

(b) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person, floor broker or floor trader.

[49 FR 8219, Mar. 5, 1984, as amended at 57 FR 23151, June 2, 1992; 58 FR 19594, Apr. 15, 1993; 67 FR 38876, June 6, 2002; 77 FR 51908, Aug. 28, 2012]

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§ 3.43 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(b) Unless a temporary license has terminated pursuant to § 3.42, a temporary license shall become a registration with the Commission upon the earlier of:

(1) A determination by the National Futures Association that the applicant is qualified for registration as an associated person, floor broker or floor trader; or

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under section 8a(2) or 8a(3) of the Act.

[49 FR 8219, Mar. 5, 1984, as amended at 49 FR 39534, Oct. 9, 1984; 54 FR 19559, May 8, 1989; 58 FR 19595, Apr. 15, 1993]

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

(a) Notwithstanding any other provisions of these regulations, and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an introducing broker upon the contemporaneous filing with the National Futures Association of:

(1) A properly completed guarantee agreement (Form 1-FR part B) from a futures commission merchant or retail foreign exchange dealer which is eligible to enter into such an agreement pursuant to § 1.10(j)(2) of this chapter;

(2) A Form 7-R properly completed in accordance with the instructions thereto;

(3) A Form 8-R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, all of whom would be eligible for a temporary license if they had applied as associated persons.

(4) A certification executed by a person duly authorized by the futures commission merchant or retail foreign exchange dealer that has executed the guarantee agreement required by paragraph (a)(1) of this section, stating that:

(i) The futures commission merchant or retail foreign exchange dealer has verified the information on the Forms 8-R filed pursuant to paragraph (a)(3) of this section which relate to education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding three years; and

(ii) To the best of the futures commission merchant's or retail foreign exchange dealer's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its principals and each branch office manager of the applicant on the Form 7-R and Forms 8-R, as appropriate, is accurate and complete; and

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

(b) The effective date of a guarantee agreement filed in accordance with paragraph (a)(1) of this section is the date upon which the temporary license is granted by the National Futures Association.

(c) An applicant that fails to respond in accordance with a written request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card will be deemed to have withdrawn its registration application and the temporary license issued to such applicant and any associated person thereof shall terminate immediately.

[51 FR 45760, Dec. 22, 1986, as amended at 53 FR 8435, Mar. 15, 1988; 57 FR 23151, June 2, 1992; 64 FR 1728, Jan. 12, 1999; 67 FR 38876, June 6, 2002; 75 FR 55427, Sept. 10, 2010; 77 FR 51908, Aug. 28, 2012]

§ 3.45 Restrictions upon activities.

(a) Subject to the provisions of § 3.46 of this subpart and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an introducing broker who

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has received written notification that a temporary license has been granted may act in the capacity of a guaranteed introducing broker.

(b) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant or retail foreign exchange dealer other than the futures commission merchant or retail foreign exchange dealer which provided the initial guarantee agreement described in § 3.44(a)(1) of this subpart: *Provided*, That, at least 10 days prior to the effective date of the termination of the existing guarantee agreement in accordance with the provisions of § 1.10 (j)(5) of this chapter, or such other period of time as the National Futures Association may allow for good cause shown, the applicant files with the National Futures Association—

(1) Written notice of such termination and

(2) A new guarantee agreement with another futures commission merchant or retail foreign exchange dealer effective the day following the last effective date of the existing guarantee agreement.

[51 FR 45761, Dec. 22, 1986, as amended at 75 FR 55427, Sept. 10, 2010]

§ 3.46 Termination.

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

(1) Five days after service upon the applicant of a notice by the National Futures Association that the applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the applicant's guarantee agreement in accordance with § 1.10(j)(4)(ii) or (j)(5) of this chapter, unless a new guarantee agreement is filed in accordance with § 3.45(b);

(3) Immediately upon the failure of an applicant to respond to a written request by the Commission or the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to

§ 3.44(c) in accordance with such request;

(4) Immediately upon the revocation or withdrawal of the guarantor futures commission merchant's registration;

(5) Immediately upon the withdrawal of the registration application pursuant to § 3.44(c);

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

(7) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act;

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

(9) Whenever a person not listed as a principal on the applicant's initial registration application becomes a principal under § 3.1(a); or

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

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

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

(b) Upon termination, the applicant may not engage in any activity which requires registration as an introducing broker.

[51 FR 45761, Dec. 22, 1986, as amended at 53 FR 8435, Mar. 15, 1988; 58 FR 19595, Apr. 15, 1993; 67 FR 38876, June 6, 2002; 77 FR 51908, Aug. 28, 2012]

§ 3.47 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

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(b) Unless a temporary license has terminated, a temporary license shall become a registration upon the earlier of:

(1) A determination by the National Futures Association that the applicant is qualified for registration as an introducing broker; or

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under sections 8a(2) or 8a(3) of the Act.

[51 FR 45761, Dec. 22, 1986, as amended at 58 FR 19595, Apr. 15, 1993]

Subpart C—Denial, Suspension or Revocation of Registration

SOURCE: 49 FR 8220, Mar. 5, 1984, unless otherwise noted.

§ 3.50 Service.

(a) For purposes of this subpart, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing. Where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three days.

(b) A copy of any notice served in accordance with paragraph (a) of this section shall also be served upon:

(1) Any registrant sponsoring the applicant or registrant pursuant to the provisions of § 3.12 of this part if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

(2) Any futures commission merchant or retail foreign exchange dealer which has entered into a guarantee agreement in accordance with § 1.10(j) of this chapter, if the applicant or registrant is registered as or applying for registration as an introducing broker.

(c) Documents served upon the Market Participants Division or upon the Division of Enforcement or filed with the Commission under this subpart shall be considered served or filed only

upon actual receipt at the Commission's Washington, DC headquarters.

(d) Except for the documents which may be served under § 3.51, any documents served upon an applicant or registrant or upon the Market Participants Division or the Division of Enforcement or filed with the Commission under this subpart shall be concurrently filed with the Proceedings Clerk, together with proof of service, in accordance with the provisions of § 10.12 (d) and (e) of this chapter.

[49 FR 8220, Mar. 5, 1984, as amended at 57 FR 23151, June 2, 1992; 60 FR 49334, Sept. 25, 1995; 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002; 75 FR 55427, Sept. 10, 2010; 78 FR 22419, Apr. 16, 2013]

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Act, the Commission may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

(1) The information, if true, is a basis upon which the applicant's registration may be denied;

(2) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in this subpart; and

(3) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application of the applicant will be deemed to have been withdrawn.

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Secretary of the Commission on or before twenty days after the date the notice described in paragraph (a) of this section is served.

[49 FR 8220, Mar. 5, 1984, as amended at 57 FR 23151, June 2, 1992]

§§ 3.52–3.54 [Reserved]

§ 3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(2) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the registrant is subject to such statutory disqualification; and

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant may be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written submission.* If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in § 3.60(b)(1) of this part. Such written submission must be served upon the Division of Enforcement and filed with the Proceedings Clerk within twenty days of the date of service of notice to the registrant.

(c) *Reply.* Within ten days of receipt of any written submission filed by the registrant, the Division of Enforcement may serve upon the registrant and file with the Proceedings Clerk a reply.

(d) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the registrant is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(e) *Suspension and order to show cause.*

(1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order to show cause is served upon the registrant in accordance with § 3.50(a), until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the registrant is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however, That* in no event shall the registrant be suspended for a period to exceed six months.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Proceedings Clerk shall promptly serve a copy of such order on the registrant, the Market Participants Division and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) of this part unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

(f) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (e)(1) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b)–(j) of this part.

[49 FR 8220, Mar. 5, 1984, as amended at 57 FR 23151, June 2, 1992; 58 FR 19595, Apr. 15, 1993; 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002; 78 FR 22419, Apr. 16, 2013]

§ 3.56 Suspension or modification of registration pursuant to section 8a(11) of the Act.

(a) *Notice.* (1) On the basis of information obtained by the Commission, the Commission may at any time serve written notice upon a registrant in any capacity under the Act that:

(i) The Commission alleges and is prepared to prove, by reference to an information, indictment or complaint authorized by a United States Attorney or an appropriate official of any State that the registrant is charged with the commission of or participation in a crime involving a violation of the Act or a violation of any other provision of Federal or State law that would reflect on the honesty or the fitness of the person to act as a fiduciary that is punishable by imprisonment for a term exceeding one year, and that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission;

(ii) An Administrative Law Judge shall make a determination, based upon written evidence and any oral hearing granted, as to whether the registrant is charged with the Commission of or participation in such a crime and whether the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission; and

(iii) If the registrant is found to be charged with the commission of or participation in such a crime and it is found that the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission, the registration of the registrant shall be suspended or modified.

(2) The notice referred to in paragraph (a) of this section shall include a short and plain statement that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

(b) *Response.* (1) If the registrant wishes to challenge the accuracy of the allegations in the notice, the registrant may submit written evidence as to:

- (i) The registrant's identity;
- (ii) The existence of a clerical error in any record documenting the information, indictment or complaint;
- (iii) The nature of the information, indictment or complaint; or

(iv) The statement accompanying the notice referred to in paragraph (a)(2) of this section and, in an effort to have his registration modified rather than suspended, the Supplemental Sponsor Certification Statement signed by a sponsor, supervising floor broker or, in the case of a floor trader, a supervising registrant, principal, contract market, or swap execution facility, as appropriate for the registrant in accordance with § 3.60(b)(2)(i) and who meets the standards set forth in § 3.60(b)(2)(i)(A) and (C).

(2) The registrant may also request an oral hearing, which shall include a statement of the issues to be addressed, a list of any witnesses to be called, a summary of the testimony to be elicited and copies of any documents to be introduced. An oral hearing shall be granted upon request.

(3) Such written submissions must be served upon the Division of Enforcement and filed with the Proceedings Clerk within twenty days of the date of service of notice to the registrant under paragraph (a) of this section.

(c) *Reply.* Within ten days of receipt of any written submission filed by the registrant, the Division of Enforcement may serve upon the registrant and file with the Proceedings Clerk a reply.

(d) *Oral hearing.* An oral hearing shall be conducted pursuant to such sections of the Commission's Rules of Practice, 17 CFR part 10, as the Administrative Law Judge deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(e) *Determination by Administrative Law Judge.* (1) A determination by the Administrative Law Judge as to whether the Division of Enforcement has shown by a preponderance of the evidence that the registrant is charged with the commission of or participation in a crime as set forth in the notice and that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission must be based upon the evidence of service, the response, if any, filed by the registrant, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit, and the oral hearing, if any. If the Division of Enforcement has made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order suspending or modifying the registration of the registrant. If the Division of Enforcement has not made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order to that effect. The Administrative Law Judge's order shall include a written determination setting forth the basis for his ruling.

(2) The Proceedings Clerk shall promptly serve a copy of such order on the registrant, the Market Participants Division and the Division of Enforcement. Such Order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

(f) Any order of suspension or modification issued under this section shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(g) On disposition of such information, indictment, or complaint, the

Commission may issue and serve on such registrant a notice under § 3.55 or § 3.60 to suspend, restrict, or revoke the registration of such person.

(h) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under the Act or its rules.

(i) A person aggrieved by an order issued under this section may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 6(c) of the Act.

[58 FR 19595, Apr. 15, 1993, as amended at 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002; 77 FR 51908, Aug. 28, 2012; 78 FR 22419, Apr. 16, 2013]

§ 3.57 Proceedings under section 8a(2)(E) of the Act.

The Commission will not initiate a proceeding under section 8a(2)(E) of the Act, if *respondeat superior* is the sole basis upon which the registrant may be found subject to a statutory disqualification.

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time give written notice to any applicant for registration or any registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act;

(2) The allegations set forth in the notice, if true, constitute a basis upon which registration may be denied, granted upon conditions, suspended, revoked or restricted;

(3) The applicant or registrant is entitled to file a response within thirty days of the date of service of the notice to challenge the evidentiary basis of the statutory disqualification set forth

in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted, or granted upon condition, or should not be conditioned, suspended, revoked or restricted; and

(4) If the applicant or registrant does not file a timely response to the notice:

(i) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true and conclusive for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act; and

(ii) A presiding officer may thereafter decide whether to issue an order of default in accordance with paragraph (g) of this section to deny, condition, suspend, revoke, or place restrictions upon registration based solely upon the facts set forth in the notice.

(b) *Response.* Within thirty days after service upon the applicant or registrant of a notice issued in accordance with the provisions of paragraph (a) of this section, the applicant or registrant shall file a response with the Proceedings Clerk and serve a copy of the response on the Division of Enforcement.

(1) In the response, the applicant or registrant shall state whether he challenges the evidentiary basis of the statutory disqualification set forth in the notice. The grounds for such a challenge shall include evidence as to:

(i) The applicant's or registrant's identity,

(ii) The existence of a clerical error in any record documenting the statutory disqualification,

(iii) The nature or date of the statutory disqualification,

(iv) The post-conviction modification of any record of conviction, or

(v) The favorable disposition of any appeal.

The applicant or registrant shall state the nature of each challenge and submit a verified statement or affidavit to support facts material to each challenge raised in the response.

(2)(i) In the response, if the person is not an associated person, a floor broker or a floor trader or an applicant for

registration in any of those capacities, the applicant or registrant shall also state whether he or she intends to show that registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, the applicant or registrant shall also state whether he or she intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person or an applicant for registration as an associated person and intends to make such a showing, he or she must also submit a letter signed by an officer or general partner authorized to bind the sponsor whereby the sponsor agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section; if the person is a floor broker or a floor trader or an applicant for registration in either capacity and intends to make such a showing, he or she must, in the case of a floor broker or applicant for registration as a floor broker, also submit a letter signed by his employer or if he or she has no employer by another floor broker or, in the case of a floor trader or applicant for registration as a floor trader, also submit a letter signed by an officer of the floor trader's clearing member, if such officer is a registrant or a principal of a registrant, or the chief operating officer of each contract market or swap execution facility that has granted trading privileges, whereby the employer or floor broker, appropriate registrant, principal or chief operating officer (on behalf of the contract market or swap execution facility) agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification

proceeding under this section; provided, that, with respect to such sponsor, supervising employer or floor broker, supervising registrant or principal:

(A) An adjudicatory proceeding pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act is not pending; and

(B) In the case of a sponsor which is a futures commission merchant, a retail foreign exchange dealer or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of § 1.12(b), § 5.6(b) or § 31.7(b) of this chapter, respectively; and

(C) Such person is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) If, in the response, the applicant or registrant states that he intends to make the showing referred to in paragraph (b)(2)(i) of this section, he shall also, within fifteen days after filing his initial response under paragraph (b) of this section, file with the Proceedings Clerk and serve a copy on the Division of Enforcement a submission which includes a statement of the applicant, registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing, and copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. The factors forming the basis for a disqualified applicant's or registrant's showing referred to in paragraph (b)(2)(i) of this section may include:

(A) Evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice;

(B) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(C) If the person is an associated person, floor broker or floor trader or an applicant for registration in any of those capacities, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would

be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

(c) *Reply*. Within thirty days after the latter of the date the applicant or registrant serves a copy of the response on the Division of Enforcement (if no further submission is to be made in accordance with paragraph (b)(2)(ii) of this section), or the date the applicant or registrant serves a copy of the further submission made in accordance with paragraph (b)(2)(ii) of this section on the Division of Enforcement, the Division of Enforcement shall file a reply thereto with the Proceedings Clerk and serve a copy of the reply on the applicant or registrant. The Division of Enforcement's reply shall include either:

(1) A motion for summary disposition stating that there are no genuine issues of material fact to be determined and that registration should be denied or revoked, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the reply and would be admissible under § 10.91 of this chapter; or

(2) A description of factual issues raised in the applicant's or registrant's response and further submission, if any, that the Division of Enforcement regards as material and disputed. Such a reply shall also include the identity and a summary of the expected testimony of each witness whom the Division intends to have testify, and copies of all documents which the Division intends to introduce.

(d) *Oral Presentation*. Within thirty days of the date the Division of Enforcement files its reply in accordance with the provisions of paragraph (c) of this section to the applicant's or registrant's response and further submission, if any, the Administrative Law Judge shall issue an order:

(1) If the Administrative Law Judge finds, based on the motion for summary disposition, that a party is entitled to judgment as a matter of law, granting, denying, suspending, or revoking the registration of an applicant or registrant, or dismissing the notice

issued in accordance with paragraph (a) of this section, and such order shall be made in accordance with the standards set forth in paragraphs (e) and (f) of this section; or

(2) Notifying the parties of a time and place of hearing. At such hearing, the parties shall be limited to presentation of witnesses and documents listed in previous filings except, for good cause shown, the parties may request that the witness and document lists be supplemented for purposes of rebuttal. Such oral hearing shall be conducted in accordance with §§ 10.61–10.81 and 10.83 of this chapter. The Administrative Law Judge shall file an initial decision after completion of the oral hearing in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(3) Upon notice that the Administrative Law Judge has concluded that an oral presentation is appropriate, the parties may elect to participate by telephone in accordance with the terms set forth in § 12.209(b) of this chapter. To effect such an election, the party shall file a notice with the Proceedings Clerk and serve a copy on all opposing parties within fifteen days of the date the Administrative Law Judge's notice is served. The filing of an election to participate by telephone will be deemed a waiver of the party's right to a full oral hearing on the parties' material disputes of fact. The Administrative Law Judge shall schedule a telephonic hearing only if all parties to the proceeding elect such a procedure. The Administrative Law Judge shall conduct such a hearing in accordance with § 12.209(b) of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(e) *Determination by Administrative Law Judge—Standards of Proof.* The Administrative Law Judge's written determination shall specifically consider whether the Division of Enforcement has shown by a preponderance of the evidence that the applicant or registrant is subject to the statutory disqualification set forth in the notice issued by the Commission and, where appropriate:

(1) In actions involving statutory disqualifications set forth in section 8a(2) of the Act, whether the applicant or registrant has made a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification; or

(2) In actions involving statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification.

(f) *Determination of Administrative Law Judge—Findings.* In making his written determination, the Administrative Law Judge shall set forth the facts material to his conclusion and provide an explanation of his decision in light of the statutory disqualification set forth in the notice and, where appropriate, his findings regarding:

(1) Evidence mitigating the seriousness of the wrongdoing underlying the applicant's or registrant's statutory disqualification;

(2) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(3) If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his or her sponsor, supervising employer or floor broker, or supervising registrant, principal, contract market, or swap execution facility may petition to lift or

modify the conditions or restrictions in accordance with § 3.64.

(g) *Default.* The procedures for obtaining a default order and the setting aside of a default order in a proceeding instituted under this section shall follow the procedures set forth in §§ 10.93 and 10.94 of this chapter.

(h) *Settlements*—(1) *When offers may be made.* Parties may, at any time during the course of the proceeding, propose offers of settlement. All offers of settlement shall be in writing.

(2) *Content of offer.* Each offer of settlement made by a respondent shall:

- (i) Acknowledge service of the notice;
- (ii) Admit the jurisdiction of the Commission with respect to the matters set forth in the notice;
- (iii) Include a waiver of:
 - (A) A hearing,
 - (B) All post-hearing procedures,
 - (C) Judicial review, and
 - (D) Any objection to the staff's participation in the Commission's consideration of the offer;
- (iv) Stipulate the record basis on which an order may be entered, which may consist solely of the notice and any findings contained in the offer of settlement; and
- (v) Consent to the entry of an order reflecting the terms of settlement agreed upon, including, where appropriate:
 - (A) Findings that the respondent is subject to statutory disqualification under sections 8a(2), 8a(3), or 8a(4) of the Act, and
 - (B) The revocation, suspension, denial or granting of full registration or imposition of conditioned or restricted registration.

(3) *Submission of offer.* Offers of settlement made by a respondent shall be submitted in writing to the Division of Enforcement, which shall present them to the Commission with the Division's recommendation. The respondent will be informed if the recommendation will be unfavorable, in which event the offer shall not be presented to the Commission unless the respondent so requests. Any offer of settlement not presented to the Commission shall be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer

and shall not be used in any manner in the proceeding by any party thereto.

(4) *Acceptance of offer.* The offer of settlement will only be deemed accepted upon issuance by the Commission of an opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Proceedings Clerk.

(5) *Rejection of offer.* When an offer of settlement is rejected, the party making the offer shall be notified by the Division of Enforcement and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding; and the offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(i) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Proceedings Clerk serves the determination on the parties unless:

- (1) One or more of the parties files and serves a timely notice of appeal in accordance with § 10.102 of this chapter; or
- (2) The Commission issues an order staying the effective date of the determination and notifying the parties of its intention to undertake sua sponte review in accordance with § 10.105 of this chapter.

(j) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

(k) With the exception of §§ 10.2 through 10.5, 10.7 through 10.12(a) (1), 10.12(a) (3) through 10.12(g), 10.26(a)–(d), 10.34, 10.43, 10.44 and 10.84 of this chapter, or unless otherwise provided in §§ 3.50 through 3.64 of this part, the provisions of the Commission's Rules of Practice in part 10 of this chapter shall not apply in any proceeding brought

under this part to deny, suspend, revoke, restrict or condition registration pursuant to sections 8a(2), 8a(3) or 8a(4) of the Commodity Exchange Act.

(1) The failure of any sponsor, supervising employer or floor broker, or supervising registrant, principal, contract market, or swap execution facility to fulfill its obligations with respect to supervision or monitoring of a conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement shall be deemed a violation of this rule under the Act.

[57 FR 23152, June 2, 1992, as amended at 58 FR 19596, Apr. 15, 1993; 60 FR 54801, Oct. 26, 1995; 75 FR 55428, Sept. 10, 2010; 77 FR 51908, Aug. 28, 2012]

§ 3.61 Extensions of time for proceedings brought under § 3.55, § 3.56, and § 3.60 of this part.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission or an Administrative Law Judge before whom a proceeding brought under § 3.55, § 3.56 or § 3.60 is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by those rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or the Administrative Law Judge may set a time limit for that action.

(b) *Motions for extension of time.* Absent extraordinary circumstances, in any instance in which a time limit that has been prescribed for an action to be taken concerning any matter exceeds seven days from the date of the order establishing the time limit, requests for extension of time shall be filed at least five (5) days prior to the expiration of the time limit and shall explain why an extension of time is necessary.

[57 FR 23154, June 2, 1992, as amended at 58 FR 19597, Apr. 15, 1993]

§ 3.62 [Reserved]

§ 3.63 Service of order issued by an Administrative Law Judge or the Commission.

A copy of any order issued pursuant to § 3.60 of this part shall be served promptly upon the applicant or registrant, the Market Participants Division, the Division of Enforcement, the National Futures Association, and any contract markets where the applicant or registrant is a member or has trading privileges in accordance with the provisions of § 3.50(a) of this part.

[57 FR 23154, June 2, 1992, as amended at 67 FR 62351, Oct. 7, 2002; 78 FR 22419, Apr. 16, 2013]

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) *Petition.* The registrant and his sponsor or supervising floor broker may file a petition with the Proceedings Clerk and serve a copy of the petition on the Division of Enforcement to lift or modify conditions or restrictions on the registrant's registration.

(1) The petition may be filed after the period specified in the order imposing the conditioned or restricted registration.

(2) In the petition, the registrant and his or her sponsor, supervising employer or floor broker, or supervising registrant, principal, contract market, or swap execution facility shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. The affidavit must be sworn to by a person with actual knowledge of the registrant's activities on behalf of the sponsor, supervising employer or floor broker, or supervising registrant, principal, contract market or swap execution facility.

(b) *Response.* (1) Within thirty days of receipt of the petition, pursuant to paragraph (a) of this section, the Division of Enforcement shall file a response with the Proceedings Clerk. The response must include a recommendation by the Division of Enforcement as to whether to continue the conditions or restrictions, modify the conditions or restrictions, or to allow for a full registration.

§ 3.70

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(2) If the Division of Enforcement agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Commission. Such recommendation will only be deemed accepted upon issuance by the Commission of an order lifting or modifying conditions or restrictions on the petitioner's registration. Such order shall be so noted on the docket by the Proceedings Clerk.

(c) *Oral presentation.* If the Division of Enforcement requests a continuation, or a modification other than in accordance with the terms of the petition, of the restrictions or conditions on the registration, the Administrative Law Judge shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this section, determine whether an oral presentation is appropriate to the reliable resolution of the registrant's petition.

(1) If the Administrative Law Judge determines that an oral presentation is appropriate, he shall notify the parties of his determination and shall schedule and conduct an oral hearing in accordance with §§ 10.61 through 10.81 of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision or an order.

(2) If the Administrative Law Judge concludes that an oral presentation is unnecessary, he shall notify the parties and issue a written decision or an order.

(d) *Effect of the Administrative Law Judge's determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Proceedings Clerk serves the determination on the registrant, the registrant's sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market, and the Division of Enforcement unless one or more of the parties files a timely notice of appeal in accordance with § 10.102 of this chapter.

(e) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this

chapter shall apply to any proceeding brought under this section.

[57 FR 23154, June 2, 1992, as amended at 58 FR 19597, Apr. 15, 1993; 60 FR 54801, Oct. 26, 1995; 77 FR 51909, Aug. 28, 2012]

Subpart D—Notice Under Section 4k(5) of the Act

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of § 3.12 of this part or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the registrant first knows or should have known such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Market Participants Division or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC headquarters (Attn: Deputy Director, Registration and Compliance Branch, Market Participants Division).

(b) *Unlawful to act as an associated person.* Upon the earlier of notification to the Commission by the registrant pursuant to paragraph (a) of this section, or actual receipt of notice to the registrant pursuant to § 3.50(b)(1) of this part, that an associated person of the registrant or an applicant for registration as an associated person may be subject to a statutory disqualification as set forth in section 8a(2) of the Act, it shall be unlawful for the registrant to permit such person to act in the capacity of an associated person of the registrant until the Commission determines that such person should nonetheless be registered.

(c) *Proceedings under subpart C.* Upon notification to the Commission by the registrant under paragraph (a) of this section, the Commission may promptly issue notice under § 3.55 or § 3.60 of this

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part, as appropriate, to suspend and revoke the registration of the associated person of the registrant or to deny the registration of the applicant for registration as an associated person of the registrant.

[49 FR 8223, Mar. 5, 1984, as amended at 57 FR 23155, June 2, 1992; 60 FR 49334, Sept. 25, 1995; 67 FR 62351, 62352, Oct. 7, 2002; 78 FR 22419, Apr. 16, 2013]

Subpart E—Delegation and Reservation of Authority

§ 3.75 Delegation and reservation of authority.

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

(b) Nothing in this subpart shall prevent the Commission from exercising the authority delegated therein.

(c) The Commission reserves to itself the decision in any case to proceed by order, upon notice and hearing, to deny, suspend, condition or restrict the registration of any person pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

(d) Nothing in this part shall affect the authority of the Commission to institute a proceeding pursuant to section 6(c) of the Act.

(e) The Commission may, by order of delegation, authorize a futures association registered pursuant to section 17 of the Act to perform all or any portion of the registration functions under subparts B through D in accordance with rules or procedures adopted by such futures association and submitted to the Commission pursuant to section 17(j) of

the Act and subject to the applicable provisions of the Act.

[49 FR 8224, Mar. 5, 1984, as amended at 57 FR 23155, June 2, 1992; 59 FR 5315, Feb. 4, 1994; 77 FR 51909, Aug. 28, 2012]

APPENDIX A TO PART 3—INTERPRETATIVE STATEMENT WITH RESPECT TO SECTION 8a(2)(C) AND (E) AND SECTION 8a(3)(J) AND (M) OF THE COMMODITY EXCHANGE ACT

Section 8a(2) (C) and (E)

The provisions of sections 8a(2)–8a(4) of the Commodity Exchange Act (“Act”) establish a system of statutory disqualifications pursuant to which the Commission may find an applicant or registrant unfit for registration and vest the Commission with wide discretion to deny, condition, suspend, restrict or revoke the registration of any person subject to one or more of the disqualifications set forth therein. The Commission recognizes that the full exercise of its authority under these provisions of the Act may have unintended results. In particular, the exercise of such authority may, in certain cases, impede the efficient enforcement of the Act and the various federal and state securities acts.

At this time, the Commission cannot anticipate all of the circumstances under which it may elect not to exercise its authority under sections 8a(2)–8a(4). Until the Commission has gained experience with these provisions of the Act, such determinations generally must be made on a case-by-case basis. Nonetheless, the Commission has identified two paragraphs of section 8a(2) of the Act which it has determined to interpret more narrowly than required.

Section 8a(2)(C). Section 8a(2) of the Act authorizes the Commission to deny, condition, suspend or restrict the registration of any person “upon notice, but without a hearing” and to revoke the registration of any person “with such hearing as may be appropriate,” if such person is subject to one or more of the disqualifications described in paragraphs (A)–(H). Section 8a(2)(C) authorizes the Commission to affect the registration of any person:

“if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction * * * , including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant

under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment advisor, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of the Act, or concerning securities;"

The Commission believes that a person enjoined from acting in a certain capacity as described in section 8a(2)(C)(i), even if the order of injunction is entered into pursuant to an agreement of settlement, similarly should be prohibited from acting in any other capacity which requires registration with the Commission. Therefore, the Commission does not intend to limit its authority under section 8a(2)(C)(i) of the Act.

However, the Commission is also aware that it has often initiated proceedings in which the sole relief sought was an injunction from engaging in certain conduct. In such circumstances, the Commission has accepted offers of settlement which provide that the findings set forth in the settlement will not form the sole basis for the denial, suspension or revocation of such person's registration with the Commission. The Commission does not wish to impede the resolution by negotiated settlement of such proceedings. Therefore, the Commission has determined that it will not exercise its authority under section 8a(2)(C)(ii) of the Act with respect to any person temporarily or permanently enjoined by agreement of settlement from engaging in any conduct described in that paragraph, if the agreement of settlement clearly restricts the use of such order of injunction or any findings set forth therein in subsequent or collateral proceedings.

Thus, a provision in the agreement of settlement to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected will preclude a collateral proceeding under section 8a(2)(C)(ii) where the sole basis for such proceeding is the agreement of settlement. Unless otherwise precluded in the agreement of settlement, however, the person will be collaterally estopped from denying the findings set forth therein, whether or not admitted, in any other subsequent or collateral proceeding and such findings may, in conjunction with the findings in such subsequent or collateral proceeding, form a basis for affecting the registration of that person or imposing such other sanctions as may be deemed appropriate.

Section 8a(2)(E) of the Act authorizes the Commission to affect the registration of any person:

If such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, [the securities acts], chapter 96 of title 18 of the United States Code, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

As in section 8a(2)(C)(ii), the Commission will not exercise its authority under section 8a(2)(E) of the Act with respect to any person subject to a statutory disqualification thereunder, if the findings are part of an agreement of settlement which clearly restricts the use of such findings by inclusion of a provision to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected.

Section 2(a)(1)(A) of the Act, *inter alia*, codifies the legal concept of *respondant superior* by providing that a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant may be held liable for the conduct of an associated person sponsored by such registrant.* Thus, findings of the type described in paragraph (E) may be entered against a registrant solely because such registrant is responsible, under section 2(a)(1)(A) of the Act, for the conduct of its associated persons. As prescribed in §3.57 of the Commission's regulations, however, the Commission will not exercise its authority under section 8a(2)(E) to affect the registration of such registrant, if *respondant superior* is the sole basis for finding that the registrant is subject to a statutory disqualification.

The Commission notes that section 8a(3)(C) and 8a(4) authorize the Commission to affect

*Specifically, section 2(a)(1)(A)(iii) of the Act provides in part, that the "act, omission or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person." 7 U.S.C. 4 (1982).

the registration of a person if it is found, after notice and opportunity for a hearing, that such person “failed reasonably to supervise another person, who is subject to such person’s supervision, with a view to preventing violations of this Act or [the securities acts], or of any of the rules, regulation or orders thereunder, and the person subject to supervision committed such a violation * * *”. In this connection, the Commission believes that any proceeding to affect the registration of a registrant against which findings have been made solely pursuant to section 2(a)(1)(A) of the Act is more appropriately initiated under the provisions of section 8a(3)(C) and 8a(4).

Section 8a(2)(E) may also be interpreted to authorize the Commission to affect the registration of any person if the findings described therein are made in a proceeding initiated by a private party either in a court of law or in a reparations proceeding under section 14 of the Act. At the present time, however, the Commission does not intend to exercise its authority under section 8a(2)(E) on the basis of such findings. The Commission believes that such proceedings are intended primarily to provide restitution to the customer and are not intended to be punitive in nature. Therefore, it may not be appropriate to use findings in such proceedings to affect the registration of any person under section 8a(2)(E).

At the same time, however, such findings may form the basis of a proceeding against a person under the provisions of section 8a(3)(M) and 8a(4), which authorize the Commission, after notice and opportunity for a hearing, to deny, condition, suspend, restrict or revoke the registration of any person if “there is other good cause.” Similarly, such findings may form the basis for a proceeding against a registrant under sections 8a(3)(C) and 8a(4) for the failure of such registrant “reasonably to supervise another person, who is subject to such person’s supervision, with a view to preventing violations of this Act * * * or of any of the rules, regulations or orders thereunder * * *”. Moreover, because the Commission views actions by private parties as an important adjunct to the Commission’s own enforcement proceedings, the Commission intends to monitor carefully decisions in such proceedings and may amend this interpretation if deemed appropriate.

Section 8a(3) (J) and (M)

Section 8a(3) authorizes the Commission to refuse to register an applicant for registration if, after notice and opportunity for a hearing, the applicant is found subject to one or more of the disqualifications described in paragraphs (A)–(M). Section 8a(4) authorizes the Commission, after notice and opportunity for a hearing, to condition, suspend,

restrict, or revoke the registration of any person subject to a disqualification under section 8a(3).

Section 8a(3)(J) authorizes the Commission to affect the registration of any person if:

If such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a contract market, a registered futures association, any other self-regulatory organization or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program, or barring or suspending such person from being associated with any member or members of such contract market, association, self-regulatory organization, or foreign regulatory body.

The Commission interprets the term “self-regulatory organization” to include, in addition to a contract market and a registered futures association, any self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934. Thus, a self-regulatory organization includes any national securities exchange, any registered securities association, any registered clearing agency and the Municipal Securities Rule-making Board.

Section 8a(3)(M). Section 8a(3)(M) authorizes the Commission to affect the registration of any person if “there is other good cause”. Specifically, the Commission interprets paragraph (M) to authorize the Commission to refuse to register such person in any new capacity, if such person, or any principal of such person, is the subject of an administrative proceeding brought by the Commission to revoke the existing registration of such person in any other capacity, pending a final decision in such administrative proceeding. The Commission believes it would be inconsistent to register a person in a new capacity, thereby determining that such person is qualified to be registered, while simultaneously seeking to revoke such person’s registration in a different capacity because such person’s conduct disqualifies him from registration.

Similarly, the Commission interprets paragraph (M) to authorize the Commission to refuse to register, register conditionally or otherwise affect the registration of any person if such person has consented, in connection with an agreement of settlement with a contract market, a registered futures association, or any other self-regulatory organization, to comply with an undertaking to withdraw all forms of existing or pending registration and/or not to apply for registration with the National Futures Association or the Commission in any capacity. Such person’s effort to violate his or her prior undertaking to withdraw from and/or not to apply for registration shall be considered to

constitute "other good cause" under paragraph (M). The Commission believes that allowing such a person to be registered would be inappropriate and inconsistent with the intention of parties to the prior settlement agreement. The failure to withdraw or the attempt to register in the face of such an undertaking would indicate the lack of fair and honest dealing which the Commission believes constitutes "other good cause" for denying, revoking or conditioning registration under the Act. The Commission also believes that allowing registration in such a situation would be inconsistent with both Section 8a(2)(A), which authorizes the Commission to refuse to register, to register conditionally, or to revoke, suspend or place restrictions upon the registration of any person if such person's prior registration has been suspended (and the period of such suspension has not expired) or has been revoked, and Section 8a(3)(J), which authorizes the Commission to refuse to register or to register conditionally any person if he or she is subject to an outstanding order denying, suspending, or expelling such person from membership in a contract market, a registered futures association, or any other self-regulatory organization.

Good cause to affect a person's registration also exists: (1) If the operations of such person disrupt or would tend to disrupt orderly market conditions, or cause or would tend to cause sudden or unreasonable fluctuations or unwarranted changes in the price of commodities or contracts for future delivery of commodities or commodity options; (2) if such person has used or is using in its name a term such as "board of trade", "clearing corporation" or "exchange" in a misleading context, or uses any terms in its representations to the public which may indicate that the person is a contract market or a member of a contract market when such is not the case, or has used or is using a misleading name which would tend to suggest to the public that the person is affiliated with another person when that is not the case or that the person is engaged in a commodity-related business when the person is not in fact substantially so engaged, or has failed to disclose to the public an agency relationship with another person when such failure could mislead the public; (3) if such person is subject to an outstanding order denying, suspending or revoking the license of such person by a licensing authority, such as a state real estate or insurance commission; and (4) if such person has failed to answer the inquiries or requests for further information concerning an application for registration filed with the Commission.

This listing, of course, is not exclusive. In general, the Commission interprets paragraph (M) to authorize the Commission to affect the registration of any person if, as a result of any act or pattern of conduct attrib-

utable to such person, although never the subject of formal action or proceeding before either a court or governmental agency, such person's potential disregard of or inability to comply with the requirements of the Act or the rules, regulations or order thereunder, or such person's moral turpitude, or lack of honesty or financial responsibility is demonstrated to the Commission.

Any inability to deal fairly with the public and consistent with just and equitable principles of trade may render an applicant or registrant unfit for registration, given the high ethical standards which must prevail in the industry.

The Commission has further addressed "other good cause" under Section 8a(3)(M) of the Act in issuing guidance letters on assessing the fitness of floor brokers, floor traders or applicants in either category:

[First guidance letter]

December 4, 1997

Robert K. Wilmouth, President, National Futures Association, 200 West Madison Street, Chicago, IL 60606-3447

Re: Adverse Registration Actions with Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category

Dear Mr. Wilmouth: As you know, the Commission on June 26, 1997, approved for publication in the FEDERAL REGISTER a Notice and Order concerning adverse registration actions by the National Futures Association ("NFA") with respect to registered floor brokers ("FBs"), registered floor traders ("FTs") and applicants for registration in either category. 62 Fed. Reg. 36050 (July 3, 1997). The Notice and Order authorized NFA to grant or to maintain, either with or without conditions or restrictions, FB or FT registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history. The Commission has worked with its staff to determine which of the pending matters could efficiently be returned to NFA for handling, and such matters have been forwarded to NFA. The Commission will continue to accept or to act upon requests for exemption, and the Commission staff will consider requests for "no-action" opinions with respect to applicable registration requirements.

By this correspondence, the Commission is issuing guidance that provides NFA further direction on how it expects NFA to exercise its delegated power, based upon the experience of the Commission and the staff with the registration review process during the past three years. This guidance will help ensure that NFA exercises its delegated power in a manner consistent with Commission precedent.

In exercising its delegated authority, NFA, of course, needs to apply all of the provisions

of Sections 8a(2) and (3) of the Commodity Exchange Act ("Act").¹ In that regard, NFA should consider the matters in which the Commission has taken action in the past and endeavor to seek similar registration restrictions, conditions, suspensions, denials, or revocations under similar circumstances.

One of the areas in which NFA appears to have had the most uncertainty is with regard to previous self-regulatory organization ("SRO") disciplinary actions. Commission Rule 1.63² provides clear guidelines for determining whether a person's history of "disciplinary offenses" should preclude service on SRO governing boards or committees.³ In determining whether to grant or to maintain, either with or without conditions or restrictions, FB or FT registration, NFA should, as an initial matter, apply the Rule 1.63(a)(6) criteria to those registered FBs, registered FTs and applicants for registration in either category. However, NFA should be acting based upon any such offenses that occurred within the previous five years, rather than the three years provided

for in Rule 1.63(c). NFA should consider disciplinary actions taken by an SRO as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934 no differently from disciplinary actions taken by an SRO in the futures industry as defined in Rule 1.3(ee).⁴ Application of the Rule 1.63 criteria, as modified, to these matters will aid NFA in making registration determinations that are reasonably consonant with Commission views.⁵ NFA should focus on the nature of the underlying conduct rather than the sanction imposed by an SRO. Thus, if a disciplinary action would not come within the coverage of Rule 1.63 but for the imposition of a short suspension of trading privileges (such as for a matter involving fighting, use of profane language or minor recordkeeping violations), NFA could exercise discretion, as has the Commission, not to institute a statutory disqualification case. On the other hand, conduct that falls clearly within the terms of Rule 1.63, such as violations of rules involving potential harm to customers of the exchange, should not be exempt from review simply because the exchange imposed a relatively minor sanction.

The Commission has treated the registration process and the SRO disciplinary process as separate matters involving separate considerations. The fact that the Commission has not pursued its own enforcement case in a particular situation does not necessarily mean that the Commission considers the situation to be a minor matter for which no registration sanctions are appropriate. Further, the Commission believes that it and NFA, entities with industry-wide perspective and responsibilities, are the appropriate bodies, rather than any individual exchange, to decide issues relating to registration status, which can affect a person's ability to function in the industry well beyond the jurisdiction of a particular exchange. Thus, NFA's

¹ 7 U.S.C. 12a(2) and (3) (1994). The letter is intended to supplement, not to supersede, other guidance provided in the past to NFA. In this regard, the NFA should continue to follow other guidance provided by the Commission or its staff.

² Commission rules referred to herein are found at 17 CFR Ch. I.

³ Rule 1.63(c) provides that a person is ineligible from serving on an SRO's disciplinary committees, arbitration panels, oversight panels or governing board if, as provided in Rule 1.63(b), the person, inter alia: (1) within the past three years has been found by a final decision of an SRO, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense; or (2) within the past three years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) provides that a "disciplinary offense" includes: (i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than \$5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

⁴ Thus, for example, a disciplinary action taken by the Chicago Board Options Exchange or the National Association of Securities Dealers, Inc. should be considered in a manner similar to a disciplinary action of the Chicago Board of Trade or NFA.

⁵ In reviewing these matters, the NFA should bear in mind recent Commission precedent which allows for reliance on settled disciplinary proceedings in some circumstances. See *In the Matter of Michael J. Clark*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,032 (Apr. 22, 1997) ("other good cause" under Section 8a(3)(M) of the Act exists based upon a pattern of exchange disciplinary actions resulting in significant sanctions for serious rule violations—whether settlements or adjudications), *aff'd sub nom.*, *Clark v. Commodity Futures Trading Commission*, No. 97-4228 (2d Cir. June 4, 1999) (unpublished).

role is in no way related to review of exchange sanctions for particular conduct, but rather it is the entirely separate task of determining whether an FB's or FT's conduct should impact his or her registration.

NFA also should look to Commission precedent in selecting conditions or restrictions to be imposed, such as a dual trading ban where a person has been involved in disciplinary offenses involving customer abuse. Where conditions or restrictions are imposed, or agreed upon, NFA also should follow Commission precedent, under which such conditions or restrictions generally have been imposed for a two-year period.

The Commission has required sponsorship for conditioned FBs and FTs when their disciplinary offenses have involved noncompetitive trading and fraud irrespective of the level of sanctions imposed by an SRO. Indeed, but for a sponsorship requirement there would be no one routinely watching and responsible for the activities of these registrants. Absent sponsorship, such FBs and FTs would only be subject to routine Commission and exchange surveillance. The Commission's rules are premised upon the judgment that requiring FTs and FBs to have sponsors to ensure their compliance with conditions is both appropriate and useful. See Rule 3.60(b)(2)(i).

A question has arisen whether, if NFA is required to prove up the underlying facts of an SRO disciplinary action, the exchanges can provide information on exchange disciplinary proceedings directly to NFA. Although Section 8c(a)(2) of the Act states that an exchange shall not disclose the evidence for a disciplinary action except to the person disciplined and to the Commission, Section 8a(10) of the Act allows the Commission to authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law. The effective discharge of the delegated registration function requires NFA to have access to the exchange evidence. Thus, the Commission believes that Section 8a(10) may reasonably be interpreted to allow the disclosure of information from exchange disciplinary proceedings directly to NFA despite the provisions of Section 8c(a)(2).

Nothing in the Notice and Order affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants

cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,

Jean A. Webb, Secretary of the Commission
[Second guidance letter]

April 13, 2000

Robert K. Wilmouth, President, National Futures Association, 200 West Madison Street, Chicago, IL 60606-3447

Re: Use of Exchange Disciplinary Actions as "Other Good Cause" to Affect Floor Broker/Floor Trader Registration

Dear Mr. Wilmouth:

I. Introduction and Background

In July 1997, the Commission issued a Notice and Order authorizing the National Futures Association ("NFA") to grant or to maintain, either with or without conditions or restrictions, floor broker ("FB") or floor trader ("FT") registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history.¹ By letter dated December 4, 1997 ("Guidance Letter"), the Commission provided further direction on how the Commission expected NFA to exercise its delegated power and to ensure that NFA exercised its delegated power in a manner consistent with Commission precedent.

The Commission has determined to revise the Guidance Letter. Specifically, the Commission is revising the portion of the Guidance Letter that addresses the use of exchange disciplinary actions as "other good cause" to affect FB and FT registrations. The Commission has made this determination following its own reconsideration of the issue and at the urging of industry members.²

¹Registration Actions by National Futures Association With Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category, 62 FR 36050 (July 3, 1997).

²See letters submitted by James Bowe, former president of the New York Board of Trade ("NYBOT"), dated October 13, 1999, Christopher Bowen, general counsel of the New York Mercantile Exchange ("NYMEX"), dated October 18, 1999, and the Joint Compliance Committee ("JCC"), dated February 2, 2000. The JCC consists of senior compliance officials from all domestic futures exchanges

The Guidance Letter pointed out that, in exercising its delegated authority, NFA must apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act ("Act").³ In particular, Section 8a(3)(M) of the Act authorizes the Commission to refuse to register or to register conditionally any person if it is found, after opportunity for hearing, that there is other good cause for statutory disqualification from registration beyond the specifically listed grounds in Sections 8a(2) and 8a(3) of the Act. The Commission held in *In the Matter of Clark* that statutory disqualification under the "other good cause" provision of Section 8a(3)(M) may arise on the basis of, among other things, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions, and that it is immaterial whether the sanctions imposed resulted from a fully-adjudicated disciplinary action or an action that was taken following a settlement.⁴

The Guidance Letter recommended the application of the provisions of Commission Rule 1.63⁵ as criteria to aid in assessing the impact of an FB or FT applicant's or registrant's previous disciplinary history on the person's fitness to be registered, with the exception that NFA should be acting based on disciplinary history from the previous five years, rather than the three years provided for in Rule 1.63.⁶ The Guidance Letter also

and the NFA (*i.e.*, the domestic self-regulatory organizations ("SROs")). In addition, Commission staff attend the JCC meetings as observers. The JCC was established to aid in the development of improved compliance systems through joint efforts and information-sharing among the SROs. Commission staff have also discussed this issue with SRO staff.

³7 U.S.C. 12a(2) and (3) (1994).

⁴*In the Matter of Clark*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,032 (Apr. 22, 1997), *aff'd sub nom.*, *Clark v. Commodity Futures Trading Commission*, No. 97-4228 (2d Cir. June 4, 1999) (unpublished).

⁵Commission rules referred to in this letter are found at 17 CFR Ch. 1.

⁶Rule 1.63 provides, among other things, that a person is ineligible from serving on SRO disciplinary committees, arbitration panels, oversight panels or governing boards if that person, *inter alia*, entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) defines a "disciplinary offense" to include:

(i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in

noted that NFA should consider disciplinary actions taken not only by futures industry SROs but also those taken by SROs as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 ("1934 Act"), including settled disciplinary actions.

II. REVISED GUIDANCE

As stated above, the Commission has determined to revise the Guidance Letter. From this point forward, NFA should cease using Rule 1.63 as the basis to evaluate the impact of an FB or FT applicant's or registrant's disciplinary history on his or her fitness to be registered. Instead, as *Clark* stated, when reviewing disciplinary history to assess the fitness to be registered of an FB, FT, or applicant in either category, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions will trigger the "other good cause" provision of Section 8a(3)(M). The "pattern" should consist of at least two final exchange disciplinary actions, whether settled or adjudicated.

NFA also should consider initiating proceedings to affect the registration of the FB or FT, even if there is only a single exchange action against the FB or FT, if the exchange action was based on allegations of particularly egregious misconduct or involved numerous instances of misconduct occurring over a long period of time. If, however, a proceeding is initiated based on a single exchange action that was disposed of by settlement, NFA may have to prove up the underlying misconduct. Furthermore, traditional principles of collateral estoppel apply to adjudicated actions, whether they are being considered individually or as part of a pattern.⁷

As provided by the Guidance Letter, "exchange disciplinary actions" would continue to include disciplinary actions taken by both futures industry SROs and SROs as defined in Section 3(a)(26) of the 1934 Exchange Act. Furthermore, NFA should review an applicant's or registrant's disciplinary history for

finest aggregating more than \$5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

⁷*Clark* at 44,929.

the past five years.⁸ At least one of the actions forming the pattern, however, must have become final after *Clark* was decided by the Commission on April 22, 1997. Finally, “serious rule violations” consist of, or are substantially related to, charges of fraud, customer abuse, other illicit trading practices, or the obstruction of an exchange investigation.

Congress, the courts and the Commission have indicated the importance of considering an applicant’s history of exchange disciplinary actions in assessing that person’s fitness to register.⁹ Furthermore, NFA’s review of exchange disciplinary actions within the context of the registration process should not simply mirror the disciplinary actions undertaken by the exchanges. The two processes are separate matters that involve separate considerations. As part of their ongoing self-regulatory obligations, exchanges must take disciplinary action¹⁰ and such disciplinary matters necessarily focus on the specific misconduct that forms the allegation. In a statutory disqualification action, however, NFA must determine whether the disciplinary history of an FB, FT or applicant over the preceding five years should impact his or her registration. Additionally, NFA possesses industry-wide perspective and responsibilities. As such, NFA, rather than an individual exchange, should decide registration status issues, since those issues affect an individual’s status within the industry as a whole, well beyond the jurisdiction of a particular exchange.

The Commission also wants to clarify to the fullest extent possible that its power to delegate the authority to deny or condition the registration of an FB, FT, or an applicant for registration in either category per-

mits exchanges to disclose to NFA all evidence underlying exchange disciplinary actions, notwithstanding the language of Section 8c(a)(2) of the Act.¹¹ The Commission’s power to delegate stems from Section 8a(10) of the Act, which permits delegation of registration functions, including statutory disqualification actions, to any person in accordance with rules adopted by such person and submitted to the Commission for approval or for review under Section 17(j) of the Act, “notwithstanding any other provision of law.” Certainly, Section 8c(a)(2) qualifies as “any other provision of law.” Furthermore, the effective discharge of the delegated function requires NFA to have access to the exchange evidence. Thus, the exercise of the delegated authority pursuant to Section 8a(10) permits the exchanges to disclose all evidence underlying disciplinary actions to NFA.¹²

This letter supersedes the Guidance Letter to the extent discussed above. In all other aspects, the Guidance Letter and other guidance provided by the Commission or its staff remain in effect. Therefore, NFA should continue to follow Commission precedent when selecting conditions or restrictions to be imposed. For example, NFA should impose a dual trading ban where customer abuse is involved and any conditions or restrictions imposed should be for a two-year period. Furthermore, NFA should require sponsorship for conditioned FBs or FTs when their disciplinary offenses involve noncompetitive trading and fraud.

Nothing in the Notice and Order or this letter affects the Commission’s authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate

⁸The Commission generally looked at a five-year period of disciplinary history. On occasion, however, the Commission examined a longer period of an applicant’s or registrant’s disciplinary history. For example, the Commission revoked the registration of one FB on the basis of exchange disciplinary cases that extended back six years, see *Clark*, 2 Comm. Fut. L. Rep. (CCH) ¶27,032, and denied an application for registration as an FT on the basis of exchange disciplinary cases that extended back seven years, see *In the Matter of Castellano*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,360 (Nov. 23, 1988), *summarily aff’d* (May 29, 1990), *reh. denied* [1990-1992 Transfer Binder] Comm. Fut. L. Rep. ¶24,870 (June 26, 1990), *aff’d sub nom. Castellano v. CFTC*, Docket No. 90-2298 (7th Cir. Nov. 20, 1991).

⁹Letter dated July 14, 1995, from Mary L. Schapiro to R. Patrick Thompson, President, New York Mercantile Exchange (unpublished). See also *Castellano*, *supra* note 8.

¹⁰See Rule 1.51(a)(7).

¹¹Section 8c(a)(2) states, in relevant part, that “[A]n exchange * * * shall not disclose the evidence therefor, except to the person who is suspended, expelled, disciplined, or denied access, and to the Commission.”

¹²Of course, the Commission could request records from the exchange and forward them to NFA. The Commission believes that this is an unnecessary administrative process and that NFA should obtain the records it needs to carry out the delegated function of conducting disciplinary history reviews directly from the exchanges. In this context and pursuant to Commission orders authorizing NFA to institute adverse registration actions, NFA should be viewed as standing in the shoes of the Commission.

Commodity Futures Trading Commission

Pt. 3, App. B

Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,
Jean A. Webb,
Secretary of the Commission.

[49 FR 8224, Mar. 5, 1984, as amended at 58 FR 19597, Apr. 15, 1993; 59 FR 5315, Feb. 4, 1994; 61 FR 58628, Nov. 18, 1996; 66 FR 53518, Oct. 23, 2001; 67 FR 62352, Oct. 7, 2002; 78 FR 22419, Apr. 16, 2013]

APPENDIX B TO PART 3—STATEMENT OF ACCEPTABLE PRACTICES WITH RE- SPECT TO ETHICS TRAINING

(a) The provisions of Section 4p(b) of the Act (7 U.S.C. 6p(b) (1994)) set forth requirements regarding training of registrants as to their responsibilities to the public. This section requires the Commission to issue regulations requiring new registrants to attend ethics training sessions within six months of registration, and all registrants to attend such training on a periodic basis. The awareness and maintenance of professional ethical standards are essential elements of a registrant's fitness. Further, the use of ethics training programs is relevant to a registrant's maintenance of adequate supervision, a requirement under Rule 166.3.

(b)(1) The Commission recognizes that technology has provided new, faster means of sharing and distributing information. In view of the foregoing, the Commission has chosen to allow registrants to develop their own ethics training programs. Nevertheless, futures industry professionals may want guidance as to the role of ethics training. Registrants may wish to consider what ethics training should be retained, its format, and how it might best be implemented. Therefore, the Commission finds it appropriate to issue this Statement of Acceptable Practices regarding appropriate training for registrants, as interpretative guidance for intermediaries on fitness and supervision. Commission registrants may look to this Statement of Acceptable Practices as a "safe harbor" concerning acceptable procedures in this area.

(2) The Commission believes that section 4p(b) of the Act reflects an intent by Congress that industry professionals be aware,

and remain abreast, of their continuing obligations to the public under the Act and the regulations thereunder. The text of the Act provides guidance as to the nature of these responsibilities. As expressed in section 4p(b) of the Act, personnel in the industry have an obligation to the public to observe the Act, the rules of the Commission, the rules of any appropriate self-regulatory organizations or contract markets (which would also include registered derivatives transaction execution facilities), or other applicable federal or state laws or regulations. Further, section 4p(b) acknowledges that registrants have an obligation to the public to observe "just and equitable principles of trade."

(3) Additionally, section 4p(b) reflects Congress' intent that registrants and their personnel retain an up-to-date knowledge of these requirements. The Act requires that registrants receive training on a periodic basis. Thus, it is the intent of Congress that Commission registrants remain current with regard to the ethical ramifications of new technology, commercial practices, regulations, or other changes.

(c) The Commission believes that training should be focused to some extent on a person's registration category, although there will obviously be certain principles and issues common to all registrants and certain general subjects that should be taught. Topics to be addressed include:

(1) An explanation of the applicable laws and regulations, and the rules of self-regulatory organizations or contract markets and registered derivatives transaction execution facilities;

(2) The registrant's obligation to the public to observe just and equitable principles of trade;

(3) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(4) How to establish effective supervisory systems and internal controls;

(5) Obtaining and assessing the financial situation and investment experience of customers;

(6) Disclosure of material information to customers; and

(7) Avoidance, proper disclosure and handling of conflicts of interest.

(d) An acceptable ethics training program would apply to all of a firm's associated persons and its principals to the extent they are required to register as associated persons. Additionally, personnel of firms that rely on their registration with other regulators, such as the Securities and Exchange Commission, should be provided with ethics training to the extent the Act and the Commission's regulations apply to their business.

(e) As to the providers of such training, the Commission believes that classes sponsored by independent persons, firms, or industry

associations would be acceptable. It would also be permissible to conduct in-house training programs. Further, registrants should ascertain the credentials of any ethics training providers they retain. Thus, persons who provide ethics training should be required to provide proof of satisfactory completion of the proficiency testing requirements applicable to the registrant and evidence of three years of relevant industry or pedagogical experience in the field. This industry experience might include the practice of law in the fields of futures or securities, or employment as a trader or risk manager at a brokerage or end-user firm. Likewise, the Commission believes that registrants should employ as ethics training providers only those persons they reasonably believe in good faith are not subject to any investigations or to bars to registration or to service on a self-regulatory organization governing board or disciplinary panel.

(f)(1) With regard to the frequency and duration of ethics training, it is permissible for a firm to require training on whatever periodic basis and duration the registrant (and relevant self-regulatory organizations) deems appropriate. It may even be appropriate not to require any such specific requirements as, for example, where ethics training could be termed ongoing. For instance, a small entity, sole proprietorship, or even a small section in an otherwise large firm, might satisfy its obligation to remain current with regard to ethics obligations by distribution of periodicals, legal cases, or advisories. Use of the latest information technology, such as Internet websites, can be useful in this regard. In such a context, there would be no structured classes, but the goal should be a continuous awareness of changing industry standards. A corporate culture to maintain high ethical standards should be established on a continuing basis.

(2) On the other hand, larger firms which transact business with a larger segment of the public may wish to implement a training program that requires periodic classwork. In such a situation, the Commission believes it appropriate for registrants to maintain such records as evidence of attendance and of the materials used for training. In the case of a floor broker or floor trader, the applicable contract market or registered derivatives transaction execution facility should maintain such evidence on behalf of its member. This evidence of ethics training could be offered to demonstrate fitness and overall compliance during audits by self-regulatory organizations, and during reviews of contract market or registered derivatives transaction execution facility operations.

(g) The methodology of such training may also be flexible. Recent innovations in information technology have made possible new, fast, and cost-efficient ways for registrants to maintain their awareness of events and

changes in the commodity interest markets. In this regard, the Commission recognizes that the needs of a firm will vary according to its size, personnel, and activities. No format of classes will be required. Rather, such training could be in the form of formal class lectures, video presentation, Internet transmission, or by simple distribution of written materials. These options should provide sufficiently flexible means for adherence to Congressional intent in this area.

(h) Finally, it should be noted that self-regulatory organizations and industry associations will have a significant role in this area. Such organizations may have separate ethics and proficiency standards, including ethics training and testing programs, for their own members.

[66 FR 53521, Oct. 23, 2001]

APPENDIX C TO PART 3—GUIDANCE ON THE APPLICATION OF §3.3(E), CHIEF COMPLIANCE OFFICER ANNUAL REPORT FORM AND CONTENT

A. Description of the Registrant's WPPs (§3.3(e)(1))

In acknowledgment of the large number of WPPs that a Registrant implements to comply with CFTC regulations, the Commission understands that for purposes of the CCO Annual Report, specific WPP descriptions may be appropriately brief while still identifying the basic purpose of the policy or procedure and how the policy or procedure operates to achieve that purpose. The CCO Annual Report should include a summary overview that describes the general forms and types of WPPs the Registrant has, such as a compliance manual specific to the Registrant, global corporate manuals or policies, and/or business-unit-specific WPPs that support the applicable regulatory requirements. This summary overview would provide a narrative of the Registrant's system or program of WPPs, how they work as a whole, and how the Registrant generally puts the WPPs into practice as part of its compliance activities. With respect to the COI policy, it is the Commission's view that the CCO should describe the COI policy specific to the Registrant, addressing the specific requirements of §1.71 or §23.605 of this chapter, as applicable.

B. Assessment of the Effectiveness of the Policies and Procedures (§3.3(e)(2))

The Commission expects a CCO Annual Report to contain a comprehensive discussion of: the assessment process; and the results of the effectiveness assessment. The regulation does not dictate the form or manner for the

effectiveness assessment. Rather, the Commission would expect each Registrant to follow a process and present the resulting assessment in a form and manner that is appropriate for the size and complexity of the Registrant's applicable business activities and structure. While §3.3(e)(2) no longer has a "requirement-by-requirement" standard, the CCO Annual Report should address all of the general areas of regulation applicable to the Registrant.

C. Areas for Improvement and Recommended Changes (§ 3.3(e)(3))

1. Section 3.3(e)(3) requires two components in the CCO Annual Report: an identification and discussion of each area that needs improvement; and a discussion of what changes are recommended to address each area needing improvement. In addressing these two elements, the CCO Annual Report should include, as applicable: A discussion of why the particular area needs improvement; a discussion of the proposed improvements and the time frame for their implementation; and a cross-reference to the regulation that a recommended change would address.

2. In general, identifying areas in need of improvement and recommending steps to effect those improvements should be a core function of compliance. Accordingly, a CCO Annual Report that makes no recommendations for changes or improvements to the compliance program may raise concerns about the adequacy of the compliance program review intended by the CCO Annual Report process. Moreover, there should be continuity from one reporting cycle to the next, such that where a previous CCO Annual Report discussed future changes or improvements that were being considered or planned, subsequent CCO Annual Reports should discuss the outcomes of the changes that were implemented during the most recent scope period, any monitoring or testing of those changes, whether any compliance issues arose from the changes and, if there were any issues, how those issues were handled. While this section may address improvements to the compliance program that have already been completed, the Commission believes that this section primarily should discuss recommended improvements in process and/or future plans to improve the Registrant's compliance program or resources devoted to compliance.

D. Resources Set Aside for Compliance (§ 3.3(e)(4))

1. The resources description required by §3.3(e)(4) should be appropriate for assisting the Registrant's senior management and the CFTC in assessing whether sufficient resources are dedicated to compliance. Accordingly, the description should include the following types of information: the budget allo-

cated to the compliance department of the Registrant for compliance with the CEA and Commission regulations; full-time compliance staffing levels for such compliance activities; partially allocated staff counts (if applicable), with information on how much of such employees' time is devoted to the Registrant's compliance matters that are subject to CFTC oversight; an explanation of managerial resources (the explanation should clearly identify the division between staffing resources and management resources devoted to compliance); general infrastructure information (*e.g.*, computers, compliance-oriented software, technology infrastructure, etc.); and if applicable, a description of the use of third party vendors or outsourcing for compliance activities. In most cases, to effectively inform the board of directors or senior officer and the Commission, the description should include quantifiable information for the financial, managerial, operational, and staffing resources allocated to compliance with the CEA and Commission regulations.

2. The Commission understands that a discussion of specific compliance budget allocations may not be as straightforward as described above depending on the size and complexity of the Registrant's compliance program and the extent to which the Registrant's compliance resources may be shared for other non-CFTC regulated business activities. The purpose of the CCO Annual Report requirement is to convey to senior management and the CFTC a clear understanding of the resources the Registrant has set aside for compliance with the CEA and Commission regulations. While some of the compliance resources used in a Registrant's CFTC compliance-related program may be used for compliance activities in other parts of a larger corporate enterprise, this sharing of resources does not negate the Registrant's obligation to discuss how the Registrant's compliance program is being resourced. For those instances where compliance resources are shared, it is recognized that the description of the shared resources may reasonably be more general in nature, providing approximations and estimates based on expected needs. However, the Commission expects that the CCO Annual Report will still address shared resources in as much detail as is necessary to convey the information needed to assess the overall compliance activities of the Registrant.

3. Section 3.3(e)(4) also requires that the CCO Annual Report include a discussion of any material deficiencies in compliance resources. If there have been reductions in the compliance program of the Registrant since the prior reporting period, for example, if there has been a reduction in compliance

staff, a significant compliance budget decrease, or the Registrant initiated significant new business activities without a corresponding increase in compliance resources, the CCO Annual Report should include an explanation of why the compliance resources are not deficient in light of the changes. If there are no material deficiencies in the resources devoted to compliance, the Commission recommends that the CCO Annual Report contain an express statement to that effect so that the recipients of the report can see that the requirement was assessed.

E. Material Noncompliance Issues (§ 3.3(e)(5))

The CCO Annual Report should include an explanation of the standard the Registrant used to determine a non-compliance event's materiality. In addition, this section of the CCO Annual Report should contain a description of each material non-compliance issue identified either through self-assessment procedures conducted within the Registrant, or noted by any external entities which conducted a review of the Registrant (such as a designated self-regulatory organization). The description should also include the corresponding actions taken, described in reasonable detail, as well as specific references to the Commission regulation or regulations that are implicated by the non-compliance event. Specifically, the Commission recommends that the CCO Annual Report include a discussion of the Registrant's deliberations on a course of remediation, how the implementation of the remediation is being or was executed, any follow-up testing of the remediation, and any noteworthy results from such testing. Additionally, the Commission recommends that CCOs consider including an overview of how the CCO or compliance department handles and tracks non-compliance events in general.

F. Material Changes to WPPs (§ 3.3(e)(6))

When describing any material changes to the WPPs, a description of the standard of materiality used should be provided. This description will provide meaningful context for any reported changes to the WPPs.

[83 FR 43523, Aug. 27, 2018]

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

Sec.

4.1 Requirements as to form.

4.2–4.4 [Reserved]

4.5 Exclusion for certain otherwise regulated persons from the definition of the term “commodity pool operator.”

4.6 Exclusion for certain otherwise regulated persons from the definition of the term “commodity trading advisor.”

4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.

4.9 [Reserved]

4.10 Definitions.

4.11 Exemption from section 4n(3)(B).

4.12 Exemption from provisions of this part.

4.13 Exemption from registration as a commodity pool operator.

4.14 Exemption from registration as a commodity trading advisor.

4.15 Continued applicability of antifraud section.

4.16 Prohibited representations.

4.17 Severability.

Subpart B—Commodity Pool Operators

4.20 Prohibited activities.

4.21 Required delivery of pool Disclosure Document.

4.22 Reporting to pool participants.

4.23 Recordkeeping.

4.24 General disclosures required.

4.25 Performance disclosures.

4.26 Use, amendment and filing of Disclosure Document.

4.27 Additional reporting by commodity pool operators and commodity trading advisors.

Subpart C—Commodity Trading Advisors

4.30 Prohibited activities.

4.31 Required delivery of Disclosure Document to prospective clients.

4.32 [Reserved]

4.33 Recordkeeping.

4.34 General disclosures required.

4.35 Performance disclosures.

4.36 Use, amendment and filing of Disclosure Document.

Subpart D—Advertising

4.40 [Reserved]

4.41 Advertising by commodity pool operators, commodity trading advisors, and the principals thereof.

APPENDIX A TO PART 4—FORM CPO–PQR

APPENDIX B TO PART 4—ADJUSTMENTS FOR ADDITIONS AND WITHDRAWALS IN THE COMPUTATION OF RATE OF RETURN

APPENDIX C TO PART 4—FORM CTA–PR

AUTHORITY: 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.