



§ 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

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

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AUTHORITY: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

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

Subpart A—Registration

§ 3.1 Definitions.

(a) *Principal*. Principal means, with respect to an applicant for registration, a registrant or a person required to be registered under the Act or these regulations:

(1) Any person including, but not limited to, a sole proprietor, general partner, officer, director, branch office manager or designated supervisor, or 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 its activities which are subject to regulation by the Commission;

(2) Any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock; or

(3) Any person who has contributed ten percent or more of the capital: *Provided, however,* That if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or insurance company subject to regulation by any State, such bank, branch, agency 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.

(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, 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) *Beneficial owner*. Any person who, without limitation, 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 beneficial ownership of a security or preventing the vesting of such beneficial ownership, or of avoiding making a contribution of ten percent or more of the capital, as part of a plan or scheme to evade being deemed a principal of an applicant or registrant under paragraph (a) of this section shall be deemed for purposes of such paragraph to be the beneficial owner or the contributor of capital.

(e) *Foreign futures authority*. Foreign futures authority means any foreign

government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule or regulation as it relates to a futures or options matter.

(f) *Commodity interest*. Commodity interest means:

(1) Any contract for the purchase or sale of a commodity for future delivery regulated under the Act and rules promulgated thereunder; and

(2) Any contract, agreement or transaction subject to Commission regulation under sections 4c or 19 of the Act.

[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]

§ 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 will notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, if registration has been granted under the Act. If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40 of this part, the National Futures Association may notify the sponsor only that a temporary license has been granted.

(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 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]

§ 3.3 [Reserved]

§ 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, floor broker, floor trader, associated person, commodity trading advisor, commodity pool operator, introducing broker, and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided, however,* That a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

(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]

§§ 3.5—3.9 [Reserved]

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.* (1) (i) Application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator 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 or introducing broker must accompany their Form 7-R with a Form 1-FR-FCM or Form 1-FR-IB, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7-R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part II A, in accordance with the provisions of § 1.10(h) of this chapter.

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

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

(2)(i) 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, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. The provisions of paragraph (a)(2)(i) of this section do not apply to any principal who has a current Form 8-R on file with the Commission or the National Futures Association.

(ii) In the case of an applicant with a principal that is not a natural person, the applicant's Form 7-R must also be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is a non-natural person principal listed on the Form 7-R of the applicant, and must be accompanied by the fingerprints of such natural person on a fingerprint card provided by the National Futures Association for that purpose: *Provided, however,* That the provisions of paragraph (a)(2)(ii) of this section shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission, is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or the United States. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7-R must be accompanied by a Form 8-R and fingerprints for each natural person described in the preceding sentence of such non-natural persons. The provisions of paragraph (a)(2)(ii) of this section do not apply to any natural person who has a current Form 8-R on file with the Commission or the National Futures Association or who has had filed on his behalf a Form 8-R and a fingerprint card pursuant to paragraph (a)(2)(i) of this section. However, if

such natural person is a foreign national who is regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, has been granted relief under §30.10 of this chapter, or is employed by or a principal of a firm which has been granted relief under §30.10 of this chapter, the National Futures Association may waive the requirement to file a Form 8-R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the applicant with respect to any natural person or entities referred to in paragraph (a)(2)(ii) of this section.

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator 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. Such person will be prohibited from engaging in 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.* A person trading solely for proprietary accounts, as defined in §1.3(y) of this chapter, is not required to register as a futures commission merchant: *Provided*, that such a person remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7-R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

(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]

§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, completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 8-R filed in accordance with paragraph (a) 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, 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 by the Commission. A temporary license issued to an applicant for registration

as a floor broker who has not been registered as a floor broker within the preceding sixty days will permit such applicant to act in the capacity of a floor trader only.

(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 provide notification in writing to the applicant and to any contract market 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 paragraphs (a) or (c) 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 have ceased: *Provided, That* if a floor broker or floor trader whose trading privileges on all contract markets have ceased for reasons unrelated to any Commission action or any contract market 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 where he 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 8-R or Form 3-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 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 or of all such trading privileges. In accordance with §3.31(d), each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person's trading

privileges on such contract market have ceased.

(c) *Special registration for certain persons operating at a new contract market.*

(1)(i) *Floor broker.* Any person whose registration as a floor broker has terminated within the preceding sixty days and who is granted trading privileges by any contract market that has made the certification required under §3.40(c) will be granted a temporary license to act in the capacity of a floor broker upon mailing to the National Futures Association of a Form 8-R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor broker on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new supervising floor broker (who must meet the requirements set forth in §3.60(b)(2)(i)(A) and (C)) that contains conditions identical to those agreed to by the previous supervising floor broker, provided that such person includes written certifications stating that:

(A) His registration as a floor broker is not suspended or revoked;

(B) There is no pending adjudicatory proceeding against him under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in §3.51; and

(C) The Disciplinary History questions (items 14-18) of his registration application contain no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(ii) *Floor trader.* Any person whose registration as a floor trader has terminated within the preceding sixty days and who is granted trading privileges by any contract market that has made the certification required under §3.40(c) will be granted a temporary license to act in the capacity of a floor

trader upon mailing to the National Futures Association of a Form 8-R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor trader on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new supervising registrant, principal or contract market (who must meet the requirements set forth in §3.60(b)(2)(i) (A) and (C)) that contains conditions identical to those agreed to by the previous supervising registrant, principal or contract market, provided that such person includes written certifications stating that:

(A) His registration as a floor trader is not suspended or revoked;

(B) There is no pending adjudicatory proceeding against him under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in §3.51; and

(C) The Disciplinary History questions (items 14-18) of his registration application contain no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(D) If such person is seeking registration as a floor broker, he will be granted a temporary license to act in the capacity of floor trader only if his prior registration was not subject to conditions or restrictions and such person's previously filed Form 8-R and Forms 3-R, if any, contain no "Yes" answers to the Disciplinary History questions (items 14-18) and his new Form 8-R also contains no "Yes" answers to the Disciplinary History questions (items 14-18).

(E) A temporary license received in accordance with paragraph (c)(1) of this section will be subject to the provisions of §§ 3.41, 3.42 and 3.43.

(2) *Transfer of registration category where there is no break in continuity of trading privileges.* (i) Any person registered as a floor broker who continuously maintains trading privileges at any contract market that has made the certification required under §3.40 will be registered as, and in the capacity of, a floor trader upon mailing to the National Futures Association of a Form 3-R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, accompanied by evidence of the granting of trading privileges at the new contract market, if applicable. Any person changing registration categories in accordance with this paragraph shall remain subject to any conditions or restrictions applicable to the previous registration.

(ii) Any person registered as a floor trader whose registration is not subject to conditions or restrictions and who continuously maintains trading privileges at any contract market that has made the certification required under §3.40 will be registered as, and in the capacity of, a floor broker upon mailing to the National Futures Association of a Form 3-R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, provided his previously filed Form 8-R and any Forms 3-R, as well as the Form 3-R indicating the intention to change registration category, contain no "Yes" answers to the Disciplinary History questions (items 14-18), accompanied by evidence of the granting of trading privileges at the new contract market, if applicable.

(d) *Review of floor broker or floor trader registration information.* Every three years, the National Futures Association shall provide each floor broker and floor trader with a printout of information contained in the National Futures Association's registration database regarding such registrant. This printout shall be promptly reviewed by the floor broker or floor trader. If the information contained therein is correct, the floor broker or floor trader need not take any further action. If the information contained therein is incorrect, the floor broker or floor trader must indicate what changes are necessary and

return the printout promptly to the National Futures Association with appropriate changes. The failure of a registrant to return the printout will be deemed to constitute recertification of the registration information contained therein: *Provided, however,* That the failure to return the printout promptly to the National Futures Association with appropriate changes, if necessary, shall be deemed a violation of this rule under the Act.

[58 FR 19591, Apr. 15, 1993]

§3.12 Registration of associated persons of futures commission merchants, 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, 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, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), (i), or (j) 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), (i), or (j) 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 his sponsors. Such person will be prohibited from engaging in 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 his or his sponsor's registration. In accordance with §3.31(c) of this part, each of the registrant's sponsors must file a notice with the National Futures Association

on Form 8-T or on a Uniform Termination Notice for Securities Industry Registration reporting the termination of the association of the associated person within twenty days thereafter.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), (i), and (j) 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 an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship, of such sponsor has signed and dated a certification in writing, stating 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 provide notification in writing to the sponsor which 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 sixty 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 sixty 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 the mailing by that sponsor to the National Futures Association of a Form 8-R, completed in accordance with the instructions thereto and accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in §3.60(b)(2)(i) (A) and (B) of this part) that contains conditions identical to those agreed to by the previous sponsor, which includes 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 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 twelve months, the Commission has permitted the withdrawal of an appli-

cation 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 sponsor has received a copy of the notice of the institution of a proceeding if the applicant or registrant has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him 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 Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(2) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§3.41, 3.42 and 3.43 of this part.

(3) The certifications permitted by paragraphs (d)(1) (i) and (v) 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 sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1) (ii)—(iv) and (vi) of this section must be signed and dated 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) 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) of this part) files with the National Futures Association a Form 3-R in accordance with the instructions thereto. The filing of such a Form 3-R shall contain a certification signed by each sponsor that each sponsor has verified that the associated person is currently registered as an associated person in some capacity and that the associated person is not subject to a statutory disqualification as set forth in section 8a(2) of the Act, and an acknowledgment that in addition to each sponsor's responsibility to supervise that associated person, each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

- (i) Solicitation or acceptance of customers' orders,
- (ii) Solicitation of funds, securities or property for a participation in a commodity pool,
- (iii) Solicitation of a client's or prospective client's discretionary account,
- (iv) Solicitation or acceptance of leverage customers' orders for leverage transactions, and
- (v) 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, 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 3-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 Fu-

tures 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 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 or introducing broker and all such customers' accounts solicited or accepted by that associated person are carried by the futures commission merchant 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 or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

(g) *Petitions for exemption.* (1) 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.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or his designee the authority to grant or deny petitions filed pursuant to this paragraph (g).

(ii) The Director of the Division of Trading and Markets may submit to

the Commission for its consideration any matter which has been delegated to him pursuant to paragraph (g)(2)(i) of this section.

(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, 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 National Association of Securities Dealers 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; or

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

(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 solici-

tion 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 him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph;

(vi) That the Disciplinary History of such person's registration application contains no "Yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for

registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(vii) 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)(vii) 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) and (i)(1)(vi) 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.

(j) *Special temporary licensing and registration procedures for associated persons of futures commission merchants and introducing brokers involved only with certain commodity interests.* Notwithstanding

any other provision of law, any person associated with a futures commission merchant or an introducing broker may be granted a temporary license or registration to act in the capacity of an associated person of such sponsor if such person restricts his activities only to those commodity interests listed in appendix B to this part and if such person and his sponsor comply with any special temporary licensing or registration procedures applicable to persons involved solely with such commodity interests that have been adopted by the National Futures Association and approved by the Commission.

(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 35292, Aug. 3, 1983; 49 FR 5522, Feb. 13, 1984; 49 FR 8218, Mar. 5, 1984; 49 FR 39531, Oct. 9, 1984; 53 FR 8431, Mar. 15, 1988; 57 FR 23145, June 2, 1992; 58 FR 19592, Apr. 15, 1993]

§§ 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 which 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; or

(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 paragraph (a)(2) 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.

(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 floor trader.* The applicant for registration; or

(3) *With respect to the fingerprints of a principal.* An officer, if the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, 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, introducing broker, commodity trading advisor, commodity pool operator 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)(i), 3.32(a)(3)(i), 3.32(c) and 3.32(h) of this part, 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,

(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 or acceptance of leverage customers' orders for leverage transactions;

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

(i) Commodity interest transactions;

(ii) Customer funds, leverage customer funds, foreign futures or foreign

options secured amount, or adjusted net capital; or

(iii) The original books and records relating to the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

(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, introducing broker, commodity trading advisor, commodity pool operator, 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 paragraph (c) of this section is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) 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.

(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).

[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]

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Division of Trading and Markets 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 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. A Form 8-R must be accompanied by that individual's fingerprints on a fingerprint card provided by the Commission or the National Futures Association for that purpose.

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Com-

mission'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 by 47 FR 27551, June 25, 1982; 49 FR 39532, Oct. 9, 1984; 53 FR 8433, Mar. 15, 1988; 57 FR 23148, June 2, 1992]

§§ 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, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, 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 which 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.

[57 FR 23149, June 2, 1992]

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

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Schedule D of Form 7-R which no longer renders accurate and current the information contained therein. Each such correction must be made on Form 3-R and must be prepared and filed in accordance with the instructions thereto: *Provided*, If a registrant files a Form 3-R to report a change in the form of the organization of the registrant, such Form must be accompanied by a document signed in a manner sufficient to be binding under local law by a person authorized to act on behalf of the registrant, in which the registrant certifies that it will be liable for all obligations of the pre-existing organization under the Act, as it may be amended from time to time, and the rules, regulations or orders which have been or may be promulgated thereunder.

(b) Each applicant or registrant as a floor broker, floor trader or associated person, each person who qualifies for the temporary no-action position under § 1.66 of this chapter, and each principal

of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, 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 which renders no longer accurate and current the information contained in the Form 8-R or supplemental statement. Each such correction must be made on Form 3-R and must be prepared and filed in accordance with the instructions thereto.

(c)(1) After the filing of a Form 8-R or a Form 3-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, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty 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, 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, 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, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty 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 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, or whose name appears on a list of floor traders submitted in accordance with §1.66(a) of this chapter in order to qualify for the temporary no-action position thereunder, must notify the National Futures Association within sixty days after such person has ceased having trading privileges on such contract market.

(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]

§3.32 Changes requiring new registration; addition of principals.

(a)(1) Except as otherwise provided in this section, if the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, registration is deemed to terminate and a new registration is required whenever a person not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration):

(i) Becomes the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or acquires the right to vote ten percent or more of the corporate registrant's voting securities;

(ii) Becomes entitled to receive ten percent or more of the registrant's profits;

(iii) Contributes ten percent or more of the capital: *Provided, however,* That if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government

authorities having regulatory responsibility for such financial institutions, or insurance company regulated by any State, the termination of registration shall be deemed not to have occurred and the re-registration requirement shall not apply, provided such debt is not guaranteed by another party not listed as a principal;

(iv) Becomes a director of the corporate registrant;

(v) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;

(vi) Acquires ownership of the registrant's business in the case of a sole proprietorship; or

(vii) Becomes a general partner of the registrant in the case of a partnership.

(2)(i) If the person who becomes a principal of the registrant because of an event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section is a non-natural person and each natural person who would be deemed a principal, under the definition set forth in §3.1(a) of this part, of the entity that is a non-natural person has a current Form 8-R on file with the Commission or the National Futures Association, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed: *Provided, however,* That within twenty days of the occurrence of the event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section, the registrant must notify the National Futures Association of the name of such added principal on Form 3-R and must file written certifications with the National Futures Association stating:

(A) the ultimate day-to-day control of the registrant remains the same,

(B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and

(C) the insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

(ii) If the principals of the new non-natural person principal of the registrant are also non-natural person principals, the registrant's registration shall not be deemed to terminate and a

new Form 7-R need not be filed only if the registrant files a Form 8-R and fingerprints for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of such latter non-natural persons: *Provided, however*, That the provisions of paragraph (a)(2)(ii) of this section shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission, is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or by the United States. The provisions of paragraph (a)(2)(ii) of this section do not apply to any natural person who has a current Form 8-R on file with the Commission or the National Futures Association. However, if such natural person is a foreign national who is regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, has been granted relief under §30.10 of this chapter, or is employed by or a principal of a firm which has been granted relief under §30.10 of this chapter, the National Futures Association may waive the requirement to file a Form 8-R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the registrant with respect to any natural persons or entities referred to in paragraph (a)(2)(ii) of this section.

(3) If a registrant adds a new director, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed pursuant to paragraph (a)(1)(iv) of this section if a majority of the board of directors remains the same and the registrant, within twenty days after the election of the director, files with the National Futures Association:

(i) A Form 8-R, completed in accordance with the instructions thereto and executed by the new director, accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose (unless such director qualifies for the exemption from the fingerprint requirement pursuant to §3.21(c) of this part), unless the new director has a current Form 8-R on file with the National Futures Association or the Commission;

(ii) A Form 3-R amending the registrant's Form 7-R to identify the new director and, if such new director has a current Form 8-R on file with the National Futures Association or the Commission, a statement to that effect; and

(iii) A corporate resolution prohibiting the new director from exercising any authority or voting privilege as a director with respect to the conduct of the registrant's commodity interest related business until the National Futures Association has completed its fitness inquiry and has determined that the new director is not unfit to act as a principal of the registrant.

(b) Application for a new registration required under paragraph (a) of this section must be on Form 7-R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(c) Notwithstanding any other provision of this part, each Form 7-R filed in accordance with paragraph (b) 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 registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8-R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to §3.21(c) of this part.

(d) In the event of a change requiring the filing of an application for registration pursuant to paragraph (a) of this section, if each person not listed as a

principal on the registrant's initial application or any amendment thereto currently is registered in any capacity or is a principal of a current Commission registrant with respect to whom the registrant has made all necessary filings under this part, such registration shall not terminate until the earliest of:

- (1) 90 days from the date that such change occurred; or
- (2) Notification by the National Futures Association of the granting of the new registration; or
- (3) Five days after service upon the registrant of a notice by the National Futures Association that the registrant may be found subject to a statutory disqualification from registration.

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraph (a)(1)(v) of this section, a new registration will not be required if the registrant submits a written notice on Form 3-R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8-R, completed in accordance with the instructions thereto and executed by the registrant's new chief executive officer or person occupying a position of similar status or performing a similar function. The Form 8-R for such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who has a current Form 8-R on file with the National Futures Association or the Commission.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become so affiliated with such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

(f) All documents submitted pursuant to this section shall be filed with the National Futures Association.

(g) Notwithstanding the provisions of § 3.12(a), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant for registration subsequent to the filing of a Form 7-R in accordance with the requirements set forth in § 3.10(a) of this part, the applicant for registration must file a Form 8-R with the National Futures Association. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. This filing need not be made for any such principal who has a current Form 8-R on file with the National Futures Association or the Commission: *Provided,* That within twenty days the applicant for registration must notify the National Futures Association of the name of such added principal on Form 3-R.

(i)(1) 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 it 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 this section. 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

this section. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's designee the authority to grant or deny petitions filed pursuant to paragraph (i) of this section.

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated to the Director pursuant to paragraph (i)(2)(i) of this section.

[49 FR 8218, Mar. 5, 1984, as amended at 49 FR 39533, Oct. 9, 1984; 53 FR 8433, Mar. 15, 1988; 54 FR 19559, May 8, 1989; 57 FR 23149, June 2, 1992]

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, 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, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must be made on Form 7-W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8-W, completed and filed with National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by the sole proprietor if the registrant is a

sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation, 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 and relationship to the registrant of the individual making the request and, in the case of a corporation, a certified copy of a resolution of the board of directors authorizing such individual to make the withdrawal request;

(4) 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;

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

(6) 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.

(7) 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 or option customer agreements, if any, have been terminated;

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

(iii) That all customer or option customer cash balances, securities, or other property, if any, have been transferred on behalf of customers or option customers or returned, and that there are no obligations to 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, option customer, leverage customer, 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, or commodity pool participant claims against the registrant; and

(vii) In the case of a futures commission merchant 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.

(c)(1) Where a futures commission merchant or an introducing broker which is not operating pursuant to a guarantee agreement 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 1-FR-FCM or a Form 1-FR-IB, respectively, which contains the in-

formation specified in §1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request: *Provided, however,* That if such registrant is also registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (in accordance with §1.10(h) of this chapter), in lieu of Form 1-FR-FCM or Form 1-FR-IB. Any financial report submitted pursuant to this paragraph (c)(1) must contain the information specified in §1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

(2) 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) A request for withdrawal from registration must be in writing and must contain a signed oath or affirmation that, to the best of the knowledge and belief of the signatory, the information contained in the request is accurate and complete.

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant on Form 7-W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8-W, must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 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, Division of Trading and Markets, Registration Unit, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, any floor broker or floor trader requesting

withdrawal from registration must file a copy of his Form 8-W with each contract market that has granted him 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 Commission notice of that determination.

(f) Except as otherwise provided in § 3.10(d), 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 with-

drawal 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, as amended at 46 FR 63035, Dec. 30, 1981. Redesignated at 46 FR 48918, Oct. 5, 1981, and amended at 47 FR 27551, June 25, 1982; 47 FR 57010, Dec. 22, 1982; 48 FR 35298, Aug. 3, 1983; 49 FR 5526, Feb. 13, 1984; 49 FR 39534, Oct. 9, 1984; 53 FR 8434, Mar. 15, 1988; 54 FR 41078, Oct. 5, 1989; 57 FR 23150, June 2, 1992; 58 FR 19592, Apr. 15, 1993; 60 FR 49334, Sept. 25, 1995; 62 FR 4642, Jan. 31, 1997]

§ 3.34 Mandatory ethics training for registrants.

(a) Any individual registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person, floor broker or floor trader under the Act must attend ethics training to ensure that he understands his responsibilities to the public under the Act, including responsibilities to observe just and equitable principles of trade, rules or regulations of the Commission, rules of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation.

(b) The training required by this section must:

(1) Include a description of the requirements of the Act and rules promulgated thereunder concerning treatment of customer orders and handling of customer business;

(2) Cover the subject matter referred to in paragraph (a) of this section, as it pertains to the registration category in which the person is registered or seeking registration; and

(3) The training required by this section must be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by:

- (i) A self-regulatory organization;
- (ii) [Reserved]

(iii) A person included on a list maintained by a registered futures association who has presented satisfactory evidence to the registered futures association that any individuals, on behalf of such person, who present ethics training, prepare an ethics training videotape or electronic presentation, or who supervise the foregoing, have taken and passed the proficiency testing requirements for an ethics training provider, as established by rules of a registered futures association that have been approved by the Commission, and possess a minimum of three years of relevant experience for an ethics training provider, as established by rules of a registered futures association that have been approved by the Commission, and who certifies that:

(A) Such person, any principals thereof (as defined in §3.1(a)) and any individuals, on behalf of such person, who present ethics training or who prepare an ethics training videotape or electronic presentation are not subject to:

(1) Statutory disqualification from registration under Sections 8a(2) or (3) of the Act;

(2) A bar from service on self-regulatory organization governing boards or committees based on disciplinary histories pursuant to §1.63 of this chapter or any self-regulatory organization rule adopted thereunder; or

(3) A pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, or 9 of the Act, or similar proceeding under Section 8a of the Act, or §§3.55, 3.56, or 3.60; and

(B) If the person will conduct training via videotape or electronic presentation, either exclusively or in addition to in-person training, he will maintain documentation reasonably designed to verify the attendance of registrants at such videotape or electronic presentation for the minimum time required.

(iv) The certification required by paragraph (b)(3)(iii) of this section is continuous and if circumstances change which result in the certification becoming inaccurate, the person must promptly so inform the registered futures association. Upon notice of such inaccuracy, the registered futures association shall refuse to include such person on or remove such person from

the list referred to in paragraph (b)(3)(iii) of this section.

(v) The registered futures association shall develop and submit to the Commission in accordance with Section 17(j) of the Act rules to provide reasonable procedures for making determinations not to include or to remove persons from the list referred to in paragraph (b)(3)(iii) of this section. Such rules shall permit a hearing before the registered futures association with an opportunity for appeal to the Commission. Such appeal shall consist solely of consideration of the record before the registered futures association and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the decision of the registered futures association.

(4) Any person providing ethics training under this section must maintain records of the materials used in such training, and of the attendees at such training, documentation to verify completion by a registrant of training through videotape or electronic presentation and evaluations of trainers in accordance with §1.31 of this chapter. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice and persons providing ethics training shall be subject to audit by any representative of the Commission. Records of attendees at such training shall be provided upon request to a registered futures association in such format as specified by the registered futures association.

(5) No person referred to in paragraph (b)(3) of this section may represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues, have in any respect been passed upon or endorsed, by the Commission, a registered futures association, or any representative thereof. Any promotional or instructional material used in connection with the training required by this section must prominently state

that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training; *Provided, however*, that this paragraph shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.

(c) Any person providing ethics training under this section may wish to address, as appropriate, issues such as:

(1) 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;

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

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

(4) Disclosure of material information in dealings with customers; and

(5) Avoidance of conflicts of interest, and when they cannot be avoided, disclosure to the customer and authorization to continue handling the customer's business if permitted under the Act and Commission rules.

(d)(1) Any individual granted registration under the Act as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person or floor broker after April 26, 1993 who has not been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, must attend training referred to in this section within six months after being granted registration, and thereafter every three years.

(2) Any individual registered as a floor trader under the Act after April 26, 1993 who has not been duly registered under the Act during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, and whose name did not appear on a list submit-

ted by a contract market to the National Futures Association in accordance with §1.66(a) of this chapter, must attend training within six months after being granted registration, and thereafter every three years.

(3) The training required by this section for individuals described in paragraphs (d)(1) and (d)(2) of this section must be at least four hours in duration for an individual's initial session and one hour in duration for subsequent periodic sessions. The requirement that new registrants attend ethics training within six months of being granted registration may be satisfied if such training of at least four hours in duration is taken within six months prior to the registrant having filed his application for registration.

(4) All individual registrants registered as of April 26, 1993 must attend the training referred to in this section every three years beginning April 26, 1993. If such an individual has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, the duration of his next session, which must be completed by April 26, 1996, must be at least one hour and all subsequent sessions must be at least one hour. If such an individual has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, the duration of his initial session, which must be completed by April 26, 1996, must be at least two hours and all subsequent sessions must be at least one hour.

(5) Any individual registrant granted registration under the Act after April 26, 1993 who has been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's most recent application for registration was received by the National Futures Association, must attend the training referred to in this section in accordance with the provisions of paragraph (d)(5) of this section. If such an individual has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section within the two years preceding filing of his most recent registration application with the National Futures Association,

the duration of his next session, which must be completed by three years from the date of the previous session or within six months from the date registration is granted, whichever comes later, must be at least one hour and all subsequent sessions must be at least one hour. If such an individual has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since the date two years prior to the date his most recent registration application was received by the National Futures Association, the duration of his initial session, which must be completed six months from the date registration is granted, must be at least four hours and all subsequent sessions must be at least one hour.

(6) Any individual whose name appears on a list submitted by a contract market to the National Futures Association in accordance with §1.66(a) of this chapter must:

(i) If he has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, attend his next training session by April 26, 1996, and attend subsequent training sessions every three years, all of which sessions must be at least one hour; and

(ii) If he has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, attend the training referred to in this section by April 26, 1994, which must be at least four hours, and thereafter attend training every three years for sessions of at least one hour.

(e) Evidence of attendance at ethics training, including evidence of completion of videotape or electronic training, must be maintained in accordance with §1.31 of this chapter by:

(1) An individual registered as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, or leverage transaction merchant;

(2) In the case of an associated person, by each sponsor of the associated person; and

(3) In the case of a floor broker or floor trader, by each contract market

that has granted trading privileges to the floor broker or floor trader.

[58 FR 19593, Apr. 15, 1993; 58 FR 21776, Apr. 23, 1993, as amended at 60 FR 63912, Dec. 13, 1995; 61 FR 20131, May 6, 1996]

Subpart B—Temporary Licenses

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

Notwithstanding any other provision 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 associated person, floor broker (which, if the applicant has not been registered as a floor broker within the preceding sixty days shall permit such applicant to act in the capacity of a floor trader only) or floor trader upon the contemporaneous filing with the National Futures Association of:

(a) A Form 8-R, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no “Yes” answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

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

(c) If the applicant is applying for registration as an associated person, the sponsor’s certification required by §3.12(c) of this part, and if the applicant is applying for registration as a floor broker or floor trader, evidence that the applicant has been granted trading privileges by a contract market 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.

(d) The failure of an applicant or the applicant’s sponsor to respond to 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 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.

[49 FR 8219, Mar. 5, 1984, as amended at 49 FR 39534, Oct. 9, 1984; 53 FR 8435, Mar. 15, 1988; 54 FR 19559, May 8, 1989; 57 FR 23151, June 2, 1992; 58 FR 19594, Apr. 15, 1993]

§ 3.41 Restrictions upon activities.

(a) 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 written 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, unless such applicant has not been registered as a floor broker within the preceding sixty days, in which case the issuance of a temporary license shall permit such applicant to act in the capacity of a floor trader only.

(b) Until registration has been granted, an applicant for registration as an associated person who has received a temporary license may not be sponsored by any registrant other than the registrant which has filed the certification described in § 3.40(c).

[49 FR 8219, Mar. 5, 1984, as amended at 58 FR 19594, Apr. 15, 1993; 58 FR 21776, Apr. 23, 1993]

§ 3.42 Termination.

(a) A temporary license 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 sponsorship certification, or immediately upon loss of trading privileges by an applicant for registration as a floor broker or floor trader on all contract markets which filed the certification described in § 3.40(c);

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

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under section 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 part 180 of this chapter within the time permitted for such compliance as specified in Section 10(g) of 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 that has granted the applicant trading privileges that:

(i) The applicant failed to disclose relevant disciplinary history information in response to items 14 through 18 on the applicant's Form 8-R; or

(ii) An event has occurred leading to an affirmative response to any of items 14 through 18 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]

§ 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 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, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(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, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act, or

none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(4) A signed and dated certification from the futures commission merchant that has executed the guarantee agreement required by paragraph (a)(1) of this section, signed by an appropriate person as defined in § 1.10(j)(1) of this chapter, stating that:

(i) The futures commission merchant 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 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: *Provided*, That a principal who has a current Form 8-R on file with the National Futures Association or the Commission is not required to submit a fingerprint card if the principal is not otherwise required to be registered as an associated person of the applicant.

(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]

§ 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 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 other than the futures commission merchant 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)(4)(ii) or (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 effective the day following the last effective date of the existing guarantee agreement.

[51 FR 45761, Dec. 22, 1986]

§ 3.46 Termination.

(a) A temporary license 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 within the time permitted under sections 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 part 180 of this chapter within the time permitted for such compliance as specified in section 10(g) of 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;

(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 in response to items 11 through 15 on the applicant's Form 7-R or items 14 through 18 on a principal's Form 8-R; or

(ii) An event has occurred leading to an affirmative response to any of items 11 through 15 on the applicant's Form

7-R or items 14 through 18 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]

§ 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.

(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 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 Division of Trading and Markets 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 office, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(d) Except for the documents which may be served under § 3.51, any documents served upon an applicant or registrant or upon the Division of Trading and Markets 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]

§ 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 Division of Trading and Markets 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]

§ 3.56 Suspension or modification of registration pursuant to section 8a(1) 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 reg-

istration 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 or contract market, as appropriate for the registrant in accordance with § 3.60(b)(2)(i) and who meets the standard 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 Division of Trading and Markets 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]

§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 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 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 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 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 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 that has granted trading privileges, whereby the employer or floor broker, appropriate registrant, principal or contract market chief operating officer (on behalf of the contract market) 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 or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of §1.12(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)(i) 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 con-

vincing 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 sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market 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.

(l) The failure of any sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market 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]

§ 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 Division of Trading and Markets, the Division of Enforcement, the National Futures Association, and any contract markets where the appli-

cant 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]

§ 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 sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market 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 or contract market.

(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.

(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]

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 Division of Trading and Markets 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 office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581).

(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 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]

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, the authority to perform all

functions specified in subparts B through D 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]

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 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

*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).

“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:

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 administra-

tive 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

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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 attributable 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.

[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]

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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AUTHORITY: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

SOURCE: 46 FR 26013, May 8, 1981, unless otherwise noted.

Subpart A—General Provisions, Definitions and Exemptions

§ 4.1 Requirements as to form.

- (a) Each document distributed pursuant to this part 4 must be:
 - (1) Clear and legible;
 - (2) Paginated; and
 - (3) Fastened in a secure manner.
- (b) Information that is required to be "prominently" disclosed under this