

## Commodity Futures Trading Commission

## § 3.32

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 prin-

cipal 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

### § 3.33

### 17 CFR Ch. I (4-1-00 Edition)

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.