

§3.70

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]

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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 Clearing and Intermediary Oversight 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: Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, 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; 67 FR 62351, 62352, Oct. 7, 2002]

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