

§ 3.13

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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; 64 FR 1727, Jan. 12, 1999; 67 FR 38874, June 6, 2002; 67 FR 62351, Oct. 7, 2002; 69 FR 16792, Mar. 31, 2004; 72 FR 63979, Nov. 14, 2007; 72 FR 63103, Nov. 8, 2007]

§ 3.13 Registration of agricultural trade option merchants and their associated persons.

(a) *Definitions*—(1) *Agricultural trade option merchant.* “Agricultural trade option merchant” means any person that is in the business of soliciting, offering to enter into, entering into, confirming the execution of, or maintaining a position in, transactions or agreements in interstate commerce which are not conducted or executed on or subject to the rules of a contract market, and which are or are held out to be of the character of, or are commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guarantee,” or “decline guarantee,” involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products,

and frozen concentrated orange juice. Provided, however, that any person entering into such transactions solely for the purpose of managing the risk arising from the conduct of his or her own commercial enterprise is not considered to be in the business described in this paragraph.

(2) Associated person of an agricultural trade option merchant. “Associated person of an agricultural trade option merchant” means a partner, employee, or agent (or any person occupying a similar status or performing similar functions) that:

(i) Solicits or accepts customers’ orders (other than in a clerical capacity) or

(ii) Supervises directly any person or persons so engaged.

(b) *Registration required.* It shall be unlawful for any person in the business of soliciting, offering or selling the instruments listed in § 32.2 of this chapter to solicit, to offer to enter into, or to enter into, to confirm the execution of, or to maintain transactions in such instruments or to supervise directly persons so engaged except if registered as an agricultural trade option merchant or as an associated person of such a registered agricultural trade option merchant under this section.

(c) *Duration of registration.* (1) A person registered in accordance with the provisions of this section shall continue to be registered until the revocation or withdrawal of registration.

(2) Agricultural trade option merchants must notify the National Futures Association within forty five days when an associated person has ceased to be so associated.

(3) An associated person who ceases to be associated with a registered agricultural trade option merchant is prohibited from engaging in activities requiring registration under § 32.13 of this chapter or representing himself or herself to be a registrant until:

(i) A registered agricultural trade option merchant notifies the National Futures Association of the person’s association; and

(ii) The associated person certifies to the National Futures Association that he or she is not disqualified from registration for the reasons listed in section 8a (2) and (3) of the Act; provided,

however, no such certification is required when the associated person becomes associated with the new agricultural trade option merchant within ninety days from when the associated person ceased the previous association.

(d) *Conditions for registration.* (1) Applicants for registration as an agricultural trade option merchant must meet the following conditions:

(i) The agricultural trade option merchant must have and maintain at all times net worth of at least \$50,000 computed in accordance with generally accepted accounting principles;

(ii) The agricultural trade option merchant must identify each of the natural persons who controls or directs the offer or sale of trade options or associated trading activity by the agricultural trade option merchant and any associated person of the agricultural trade option merchant and each such natural person must certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act; and

(iii) The agricultural trade option merchant must provide access to any representative of the Commission or the United States Department of Justice for the purpose of inspecting books and records.

(2) Applicants for registration as an associated person of an must meet the following conditions. Such persons must:

(i) Identify the agricultural trade option merchant with whom the person is associated or to be associated within thirty days of the person's registration; and

(ii) Certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act.

(e) *Applications for registration.* (1) The agricultural trade option merchant, including its principals, and associated persons of an agricultural trade option merchant must apply for registration on the appropriate forms specified by the National Futures Association and approved by the Commission, in accordance with the instructions thereto, including the separate certifications from each natural person that he or she is not disqualified for any of the reasons listed in sections 8a(2) and (3)

of the Act and such other identifying background information as may be specified.

(2) The agricultural trade option merchant's application must also include its most recent annual financial statements certified by an independent certified public accountant in accordance with generally accepted auditing standards prepared within the prior 12 months.

(3) These applications must be supplemented to include any changes in the information required to be provided thereon on a form specified by the National Futures Association and approved by the Commission.

(f) *Withdrawal of application for registration; denial, suspension and revocation of registration.* The provisions of §§ 3.51, 3.55, 3.56 and 3.60 shall apply to applicants for registration and registrants as agricultural trade options merchants and their associated persons under this part 3 as though they were an applicant or registrant in any capacity under the Act.

(g) *Withdrawal from registration.* An agricultural trade option merchant that has ceased or has not commenced engaging in activities requiring registration may withdraw from registration 30 days after notifying the National Futures Association on the specified form of its intent to do so, unless otherwise notified by the Commission. Such a withdrawal notification must include information identifying the location of, and the custodian authorized to release, the agricultural trade option merchant's records, a statement of the disposition of customer positions, cash balances, securities or other property and a statement that no obligations to customers arising from agricultural trade options remain outstanding.

(h) *Dual registration of associated persons.* An associated person of an agricultural trade option merchant may be associated with other registrants subject to the provision of § 3.12(f).

[64 FR 68016, Dec. 6, 1999]