

## Commodity Futures Trading Commission

## § 3.21

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

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

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

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

ments of paragraph (i)(1) of this section.

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

[45 FR 80491, Dec. 5, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### §§ 3.13–3.20 [Reserved]

### § 3.21 Exemption from fingerprinting requirement in certain cases.

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

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

(2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days, provided that the provisions of this paragraph (a)(2) shall not be applicable to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration; or

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

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

(1) With respect to the fingerprints of an associated person: An officer, if the sponsor is a corporation; a general

partner, if a partnership; or the sole proprietor, if a sole proprietorship;

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

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

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

(1) Is not engaged in:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

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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; 66 FR 53518, Oct. 23, 2001; 75 FR 55425, Sept. 10, 2010; 77 FR 2627, Jan. 19, 2012; 77 FR 51906, Aug. 28, 2012]

### § 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Division of Clearing and Intermediary Oversight 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.

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Commission's regulations which itself con-

stitutes 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; 67 FR 62351, Oct. 7, 2002; 77 FR 51906, Aug. 28, 2012]

### §§ 3.23–3.29 [Reserved]

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

(a) The address of each registrant, applicant for registration, and principal, as submitted on the application for registration (Form 7-R or Form 8-R) or as submitted on the biographical supplement (Form 8-R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: Provided that the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to an associated person to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.