

## Commodity Futures Trading Commission

## § 3.21

### §§ 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:

### § 3.22

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(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 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 Swap Dealer 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 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 at 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; 78 FR 22419, Apr. 16, 2013]