

### § 3.4

### 17 CFR Ch. I (4–1–15 Edition)

§ 1.10(b)(2)(ii) of this chapter, simultaneously with the Financial and Operational Combined Uniform Single Report, as required under § 1.10(h) of this chapter, or simultaneously with the financial condition report, as required under section 4s(f) of the Act, as applicable.

(3) The report shall include a certification by the chief compliance officer or chief executive officer of the registrant that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

(4) The futures commission merchant, swap dealer, or major swap participant shall promptly furnish an amended annual report if material errors or omissions in the report are identified. An amendment must contain the certification required under paragraph (f)(3) of this section.

(5) A futures commission merchant, swap dealer, or major swap participant may request from the Commission an extension of time to furnish its annual report, provided the registrant's failure to timely furnish the report could not be eliminated by the registrant without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(6) A futures commission merchant, swap dealer, or major swap participant may incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period to the Commission. If the futures commission merchant, swap dealer, or major swap participant is registered in more than one capacity with the Commission, and must submit more than one annual report, an annual report submitted as one registrant may incorporate by reference sections in the annual report furnished within the current or immediately preceding reporting period as the other registrant.

(g) *Recordkeeping.* (1) The futures commission merchant, swap dealer, or major swap participant shall maintain:

(i) A copy of the registrant's policies and procedures reasonably designed to ensure compliance with the Act and Commission regulations;

(ii) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (e) of this section; and

(iii) Any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(2) All records or reports that a futures commission merchant, swap dealer, or major swap participant are required to maintain pursuant to this section shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of the applicable prudential regulator, as defined in 1a(39) of the Act.

[77 FR 20200, Apr. 3, 2012, as amended at 78 FR 68645, Nov. 14, 2013]

#### **§ 3.4 Registration in one capacity not included in registration in any other capacity.**

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, floor broker, floor trader of any commodity for future delivery, commodity trading advisor, commodity pool operator, introducing broker, leverage transaction merchant, and associated person (other than an associated person of a swap dealer or major swap participant) must register as such under the Act. Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, registration in one capacity under the Act shall not include registration in any other capacity.

(b) Except as may be provided in any rule, regulation or order of the Commission, registration as an associated

person in one capacity shall not include registration as an associated person in any other capacity: *Provided, however,* That an associated person who is sponsored by a registrant, which itself is registered in more than one capacity, need register only once to act as an associated person of the registrant, and shall be deemed to be an associated person of such registrant, in each such capacity.

[49 FR 39530, Oct. 9, 1984, as amended at 58 FR 19590, Apr. 15, 1993; 75 FR 55424, Sept. 10, 2010; 77 FR 2626, Jan. 19, 2012; 77 FR 51904, Aug. 28, 2012]

§§ 3.5–3.9 [Reserved]

**§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants and leverage transaction merchants.**

(a) *Application for registration.* (1)(i) Except as provided in paragraph (a)(3) of this section, application for registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant, retail foreign exchange dealer or introducing broker must accompany their Form 7–R with a Form 1–FR–FCM or Form 1–FR–IB, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7–R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part II A, in accordance with the provisions of § 1.10(h) of this chapter.

(iii) Applicants for registration as a commodity pool operator must accom-

pany their Form 7–R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7–R with a Form 2–FR in accordance with the provisions of § 3.13 of this chapter.

(v)(A) Applicants for registration as a swap dealer or major swap participant must accompany their Form 7–R with such documentation as may be required to demonstrate compliance with each Section 4s Implementing Regulation, as defined in § 3.1(f), applicable to them, in accordance with the terms of the Section 4s Implementing Regulation; *Provided, however,* that for the purposes of this paragraph (a)(1)(v) the term “compliance” includes the term “the ability to comply,” to the extent that a particular Section 4s Implementing Regulation may require demonstration of the ability to comply with a requirement thereunder.

(B) The filing of the Form 7–R and accompanying documentation by the applicant swap dealer or major swap participant authorizes the Commission to conduct on-site inspection of the applicant to determine compliance with the Section 4s Implementing Regulations applicable to it.

(C)(I) At any time prior to the latest effective date of the Swap Definitional Regulations, defined in § 3.1(g), any person may apply to be registered as a swap dealer or major swap participant.

(2) By no later than the latest effective date of the Swap Definitional Regulations, each person who is a swap dealer or major swap participant on that date must apply to be registered as a swap dealer or major swap participant, as the case may be.

(3) From and after the latest effective date of the Swap Definitional Regulations, each person who intends to engage in business as a swap dealer or major swap participant must apply to be registered as a swap dealer or major swap participant, as the case may be.

(D)(I) Where an applicant for registration as a swap dealer or major swap participant to whom the National Futures Association has provided notice of provisional registration under § 3.2(c)(3) fails to demonstrate compliance with a Section 4s Implementing