during the prior crop year will be allocated raisins under these offers on the basis of this acquisitions (up to the time the original offer is made) of raisins in the current crop year. If field prices are not established, the offer shall be made not more than fifteen days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage, pursuant to this paragraph, shall be the established field price for free tonnage raisins of that varietal type, plus 3 percent of the established field price, plus the estimated costs incurred by the Committee for equity holders.

(h) *Publicity*. The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators, and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation of the trade demand, preliminary percentages, and interim percentages and shall notify handlers, dehydrators, and the cooperative bargaining association(s) of the Secretary's action on percentages by registered or certified mail.

21. Section 989.55 is revised to read as follows:

§ 989.55 Regulation by the Secretary.

Whenever the Secretary finds, from the recommendation and supporting information supplied by the Committee or from other available information, that to designate final free and reserve percentages for any varietal type of standard raisins acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. In the event the Secretary finds that suspension or termination of any percentages computed by the Committee or designated by the Secretary tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such percentages.

22. Section 989.65 is revised to read as follows:

§ 989.65 Free and reserve tonnage.

The standard raisins acquired by handlers which are free tonnage, and any reserve tonnage purchased for free use, may be disposed of by him in any marketing channel, subject to the applicable provisions of this part. A handler's free tonnage of a varietal type of raisin shall be either the free percentage of the standard raisins of the varietal type acquired by him or all of the standard raisins of the varietal type acquired by him if not free percentage is established by the Committee or designated by the Secretary for that varietal type. A handler's reserve tonnage of a varietal type shall be the reserve percentage of the standard raisins of that varietal type acquired by him.

§ 989.66 [Amended]

23. Section 989.66 is amended by removing the proviso in paragraph (b)(1) and changing the punctuation after the word "control" from a colon (:) to a period (.).

§ 989.67 [Amended]

24. Section 989.67(j) is amended by changing the reference from "§ 989.54(d)" to "§ 989.54(g)".

§ 989.69 [Removed]

25. Section 989.69 is removed.

26. Section 989.73 is amended by redesignation current paragraph (c) as (d), and adding a new paragraph (c) reading as follows:

§ 989.73 Reports.

* * * * *

(c) Each handler shall file such reports of creditable promotion including paid advertising as recommended by the Committee and approved by the Secretary.

* * * * *

§ 989.76 [Amended]

27. Section 989.76 is amended by adding the following sentence at the end of that section reading as follows: "The Committee, with the approval of the Secretary, may prescribe rules and regulations to include under this section handler records that detail promotion and advertising activities which the Committee may need to perform its functions under § 989.53.

§ 989.77 [Amended]

28. Section 989.77 is amended by adding at the end of the first sentence the phrase "and promotion and advertising activities conducted by handlers under § 989.53".

29. The first sentence of § 989.80(a) is amended by adding at the end of the sentence the words, "less any amounts credited pursuant to § 989.53."

30. Section 989.80 is revised by adding paragraph (d) to read as follows:

§ 989.80 Assessments.

* * * * *

(d) Each handler shall, with respect to administrative assessments not paid within 30 calendar days of the date of the Committee's invoice, pay to the Committee interest on the unpaid assessment at the rate of the prime rate established by the bank in which the Committee has its administrative assessment funds deposited, on the day that the administrative assessment becomes delinquent plus 2 percent; and further, that such rate of interest be added to the bill monthly until the delinquent handler's assessment plus applicable interest has been paid: *Provided*, That the Committee may, with the approval of the Secretary, modify the interest rate applicable to delinquent handler's assessment through the establishment of applicable rules and regulations.

§ 989.85 [Amended]

31. Section 989.85 is amended by removing the words "and no member or alternate member of the Executive Operations Committee".

§ 989.95 [Amended]

32. Section 989.95 is amended by removing the words: "and the Executive Operations Committee" from the first sentence; "or of the Executive Operations Committee" from the second sentence, and "or the Executive Operations Committee" from the third sentence.

Signed at Washington, D.C. on March 29, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-8699 Filed 4-5-83; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Temporary Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to adopt amendments to its "Rules of Practice for Domestic Licensing

Proceedings" in 10 CFR Part 2 and to its regulations in 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," providing for the issuance of temporary operating licenses for nuclear power reactors. Public Law 97–415, enacted on January 4, 1983, amended section 192 of the Atomic Energy Act of 1954 (the Act), to authorize the NRC to issue such licenses. Section 192, initially added to the Act on June 2, 1972, authorized the Atomic Energy Commission (AEC) to issue temporary operating licenses for nuclear power reactors under certain prescribed circumstances. (The AEC's licensing authority was transferred to the NRC in 1975.) The authority under the original section 192 expired, however, on October 30, 1973. To the extent that the amended section 192 is in substance the same as the original section, the implementing regulations in the amendments to Parts 2 and 50 are also similar in substance to the now expired regulations which were initially published in 1972 to implement the section. The proposed amendment to Part 2 and 50 set out below are designed to conform Commission regulations and procedures to the new temporary operating licensing authority.

DATE: Comment period expires May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as the comments received on or before this date.

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received on the amendments as well as on the Regulatory Analysis prepared in connection with the amendments may be examined in the Commission's Public Document Room at 1717 H Street, NW., Wahington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492–8690.

SUPPLEMENTARY INFORMATION:

Background

After the March 1979 accident at the Three Mile Island nuclear power plant, the NRC focused its attention on evaluating the accident and its implications for the safe regulation of nuclear power in this country and on developing the necessary regulatory improvements for continued operation of nuclear power plants. During this period, construction continued on those nuclear power plants with construction permits, although NRC applied only very limited effort to preparing and meeting the necessary safety reviews and hearing requirements for the issuance of operating licenses for these facilities. Largely as a result of this state of affairs, in late 1980 it was argued that there was a possibility that delays would occur between the time when construction of some of these plants would be sufficiently completed to allow fuel loading and the start of operations and the time when all requirements for the issuance of operating licenses (including the hearing requirements of the Atomic Energy Act) would be met.

Under the Atomic Energy Act of 1954, as amended (the Act), no person may operate a nuclear power plant without first obtaining an operating license from the NRC. A formal on-the-record evidentiary hearing must be held—and a decision rendered on the basis of that record—if requested by any person whose interest may be affected, before the Commission may issue an operating license. Before the enactment of Pub. L. 97–415, in a case where a hearing is held, the Commission lacked the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; a utility was required instead to await authorization in the course of the hearing process. *See* 10 CFR 50.57(c).

It continues to be argued that, notwithstanding the administrative changes to the licensing process designed to reduce the time required to complete the licensing of these plants, there remains a possibility that some licensing delays might occur for some of the plants scheduled to be completed before the end of 1983. In order to obviate the possibility of such delays ever occuring, on March 18, 1981, the Commission submitted a legislative proposal to amend the Act so as to authorize the Commission to issue a temporary operating license for a nuclear power plant, allowing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues relating to the final operating license. Pub. L. 97–415 is the final legislative product of the Commission 's proposal. It is an "extraordinary and temporary cure for an extraordinary and temporary situation." Conf. Rep. No. 97–884, 97th Cong., 2d Sess. at 35 (1982).

General

A person applying for an operating license for a nuclear power plant, which is licensed under sections 103 or 104b. of the Act and as to which a hearing is otherwise required under section 189a. of the Act, could apply for a temporary operating license, pending final action by the Commission on the application for the final operating license. The temporary operating license for the facility would authorize fuel loading, testing and operation at a specific power level to be determined by the Commission. The initial petition would have to be limited to power levels not to exceed 5 percent of the nuclear facility's rated full thermal power, and the Commission could not initially authorize a higher power level. After the temporary operating license is issued, the licensee may file one or more additional petitions with the Commission to allow facility operation up to full power in staged increases in power level beyond the initial 5 percent limitation. All authorizations for temporary operating licenses under section 192 and these implementing regulations must be pursuant to a vote and a final order of the Commission itself and cannot be delegated to the NRC staff. The authorizations themselves lie within the discretion of the Commission. This means, among other things, that the Commission in a temporary operating license would authorize both a given power level and the time it deems appropriate for operation at that level before issuance of the full power license.

The present authority and procedures in § 50.57(c) of the regulations (under which a presiding Atomic Safety and Licensing Board may, on motion, and after a decision based on the evidentiary record or upon agreement of the parties to the contested proceeding, authorize the issuance of a fuel load or low-power and testing license) remain available and are not affected at all by these regulations implementing section 192 of the Act. In other words, the new § 50.57(d) (described below) for temporary operating license authority is not coupled to the present § 50.57(c), and a licensee proceeding under § 50.57(c) may also proceed separately under § 50.57(d) without any rights being waived under § 50.57(c). If a license already has a low power license and wishes to go to higher or full power using the temporary operating license procedure (that is, it wants to translate its low power authority under § 50.57(c) to low power authority under § 50.57(d) and then to go to higher power under

§ 50.57(d) for some specified time period), it should show that it is in satisfactory compliance with § 50[579d) and that the temporary operating license for low power would be in all respects the same as or more restrictive than the low power license. Although the Commission does not wish to require *pro forma* acts, a licensee in the situation described above should show that the time periods and authorized power level for both types of licenses are compatible. Additionally, to simplify the Commission's considerations, it should show that the parties affected by this situation (ordinarily the parties in the proceeding under § 50.57(c)) have not waived their rights and agree to its proposed course of action; consequently, to make sure that there truly is an agreement and that everyone's rights are being protected, the Commission expects licensees to demonstrate to it (under the procedures described in § 2.301 *et seq.*, described later) that affected parties were on notice of and have not objected to the licensee's proposed action. If a licensee does not or can not make such a showing, the Commission may still issue the temporary operating license, but may use additional procedures to make its decision.

In delineating the circumstances under which petitions may be filed and conditions under which the Commission may exercise its authority, the proposed rule carefully follows the prescriptions in section 11 of Pub. L. 97–415. These provisions are reflected in the proposed amendments to Parts 2 and 50 set out below. In essence, these amendments would establish a detailed procedural framework for considering and issuing temporary operating licenses. Section 192, as amended, and its accompanying legislative history clearly contemplate that the procedural framework is both useful and needed to govern the Commission's actions in exercising the new authority and to preserve for the public its right to participate in licensing decisions.

Proposed Subpart C to CFR Part 2—"Procedures Under Section 192 for the Issuance of Temporary Operating Licenses."

Subpart C would simply add procedural requirements to 10 CFR Part 2 needed to implement the temporary operating licensing authority in section 192 of the Act as provided for in a new § 50.57(d) of 10 CFR Part 50. Unlike the hearing process on the final operating license, the temporary operating licensing process would not be subject to the hearing requirements of section 189a. of the Act, to the requirements of subpart A, or to all the requirements of subpart G of the Rules of Practice in 10 CFR Part 2. However, certain sections of subpart G would be applied to resolve needless controversy about such items as the filing of papers, service on parties, and so on. These are 10 CFR 2.701, 2.702 and 2.708—2.712, relating to service and filing of documents, maintaining a docket, and time computations and extensions; § 2.713, relating to appearance and practice before the Commission; § 2.758, generally prohibiting challenges to the Commission's rules; and § 2.772, generally granting the Commission's Secretary the authority to rule on procedural matters.

It should be noted that 10 CFR 2.719 and 2.780, relating to separation of functions and *ex parte* communications, would not apply. However, the Commission is sensitive to the concern that the informal contacts that would be allowed thereby should not be extensive and that they should not result in significant data or argument that are both relied on by the Commission in its temporary operating licensing decision and unavailable to the parties for comment before the decision. Thus, if informal contacts do take place which provide significant data or argument and which are both relied on by the Commission and unavailable to the parties, then that data or argument will be made available for comment before the decision. The Commission's decision not to apply separation of functions and *ex parte* rules to temporary operating licensing reflects a preference not to apply rules intended for formal, trial type proceedings, and is based on the belief that operating licensing and temporary operating licensing proceedings on a given plant are separate proceedings for the purpose of application of the formal hearing requirements of the Administration Procedure Act (APA). The amendment to section 192 of the Atomic Energy Act (Act) states that section 189a. of the Act does not apply to a temporary operating licensing proceeding; thus, if section 189a. does not apply, then the APA's formal hearing requirements do not apply either. Furthermore, the Commission's consideration of informal communications with the parties in an informal temporary operating licensing proceeding would not prevent the Commission from eventually considering, as necessary, issues arising from the formal operating licensing proceeding. Information provided in the informal proceeding will not be used in the formal proceeding, unless it is formally included in the record.

It bears mention that the Conference Committee noted that, under section 192, the Commission cannot issue a temporary operating license before "all significant safety issues specific to the facility in question have been resolved to the Commission's satisfaction." *See* Conf. Rep. No. 97–884, 97th Cong., 2d Sess. at 35 (1982).

Subpart C provides all of the necessary procedural guidance regarding requests for, and Commission authorization of, temporary operating licenses. Breifly, Subpart C would provide:

- For the petition for a temporary operating license or for an amendment to that license to be filed in the form of a written motion. The written motion, with supporting affidavits, must be served on all parties to the proceeding for the issuance of the final operating license.
- The initial petition must be limited to power levels not to exceed 5 percent of rated full thermal power. After the issuance of the temporary operating license, the licensee may file subsequent petitions with the Commission to amend the temporary operating license by incremental increases in power levels in excess of the initial 5 percent limitation. Each new petition can request only one incremental increase.
- The proposed subpart provides general guidance on the contents and requirements for affidavits which may be filed in support of or in opposition to petitions for the issuance, or the amendment, of temporary operating licenses.
- The Proposed rules provide for prompt publication of notices of petitions for temporary operating licenses as well as for amendments to such licenses and also provide for a 30-day period for public comment. the notice will inform interested persons about the way they can obtain access to the petition and its supporting affidavits. Such access is needed so that such persons might, as the rules also provide, file responsive affidavits to the petition.
- The proposed rules do not specify a time after the 30-day public comment period for Commission action on the petition. In keeping with the purpose of the temporary operating license authority, the proposed rules provide that the Commission will act as expeditiously as possible on petitions for temporary operating licenses and for amendments to such licenses.
- Issuance of a temporary operating license or an amendment must be pursuant to a final order of the Commission itself, which recites the reasons called for in section 192 of the Act and in § 50.57(d) of the regulations.

As called for by the legislation, the order would be transmitted upon its issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission would be subject to judicial review under section 189b. of the Act. It should be noted that, pursuant to the legislation, the requirements of section 189a. of the Act would not apply to the issuance or amendment of a temporary operating license. Thus, the legislation authorizes the Commission to use procedures other than formal adjudicatory procedures in issuing a temporary operating license. In this regard, the Commission will develop informal procedures case-by-case to resolve particular issues as they arise.

• The proposed rules restate the procedural constraints in section 192 to assure that the issuance of a temporary operating license does not prejudge the outcome of the licensing hearing for the final operating license for that nuclear power plant or prejudice the rights of any party to the hearing to raise any proper issue in that hearing and to have that issue decided.

• The proposed rules require, as does section 192, that any party to the final operating license hearing, or any licensing board member conducting the hearing, promptly notify the Commission about any information made available as part of that hearing: (1) That the terms and conditions of the temporary operating license are not being met or (2) that they are insufficient to provide reasonable assurance that operation of the facility during the period of the temporary operating license will provide adequate protection to the public health and safety and to the environment.

• The proposed rules state that a temporary operating license is subject to modification, suspension or revocation, or to the imposition of civil penalties pursuant to sections 186 and 234 of the Atomic Energy Act and subpart B of 10 CFR Part 2.

• Finally, it should be noted that, pursuant to section 192d. of the Act, the Commission will exert its best efforts to adopt appropriate administrative remedies to minimize the need for the issuance of temporary operating licenses. This is in keeping with the conferees' agreement in the Conference Report that a temporary operating license should be a "last resort remedy, to be employed only when no other alternative is available." Conf. Rep. No. 97–884, 97th Cong., 2d Sess. at 36 (1982). The Commission will also ensure that any administrative remedies it adopts will not themselves infringe upon the right of any party to a full and fair hearing under the Act, again in keeping with the conferees' expectations. *Id.* And, lastly, the Commission will notify the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate of all administrative remedies it proposes to adopt, also in keeping with the conferees' intentions. *Id.*

Proposed § 50.57(d) of 10 CFR Part 50

A new § 50.57(d) would be added to reflect the substance of the temporary operating licensing authority granted by Public Law 97–415 and the special provisions which must be satisfied before the Commission exercises this authority. Pursuant to section 11 of Pub. L. 97–415 and § 50.57(d), the following requirements would be applicable to a petition for and the issuance of a temporary operating license and amendments to that license:

• A petition for the issuance of a temporary operating license could not be filed with the Commission until the Advisory Committee on Reactor Safeguards (ACRS) report, the NRC staff's initial safety evaluation report (SER) and the staff's supplement to this report (SSER) prepared in response to the ACRS report for the plant, the NRC staff's final environmental statement, and, a State, local or utility emergency plan have been filed.

• The initial petition for a temporary operating license and amendments to that license would be handled as described before.

• After the issuance of a temporary operating license, subsequent petitions from the utility for increased power levels, notice and public comment periods on each new petition, and the determinations by the NRC called for by section 192 (and implemented in this new § 50.57(d)) would be required before the Commission could allow operation at power levels beyond the initial 5 percent low-power testing level.

• Before issuing a temporary operating license or amending the license to allow the operation at an increased power level, NRC must provide notice of the request for such authority and a 30-day period for public comment.

• Upon the expiration of the 30-day comment period, the Commission could issue the temporary operating license, or amend the license to allow temporary operation at a power level in excess of the initial license limitation, as the case may be, if the Commission itself determined that: (1) All requirements of law other than the conduct or completion of any required hearing on the final operating license are met; (2) in accordance with such requirements, there is reasonable assurance temporary operation of the facility in accordance with the terms and conditions of the license will provide adequate protection to the public health and safety and the environment; and (3) denial of the temporary operating license will result in delay between the time when the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the time when a final operating license for the facility would otherwise be issued. For a petition to amend the temporary operating license to permit operation at a power level in excess of 5 percent of the facility's rated full thermal power, the Commission's findings must, of course, be directed to operation at the increased power level which would be authorized by the amendment.

• Any final Commission order authorizing the issuance of a temporary operating license pursuant to section 192 (*i.e.*, as distinguished from an order which may be issued by a presiding Atomic Safety and Licensing Board under paragraph (c) of § 50.57) of the Act must recite with specificity the reasons justifying the findings required by that section and § 50.57(d). The order must be sent upon issuance to the Committees described before.

• The temporary operating license would contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension.

• The Commission would suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license (and on which a hearing under section 189a. is being conducted) with due diligence. The Commission could, of course, suspend the license for other reasons, such as in the interest of public health and safety.

• Section 192 provides that the Commission's authority to issue new temporary operating licenses shall expire on December 31, 1983. Since the Commission cannot issue new temporary operating licenses after December 31, 1983, it expects any licensee that wishes to apply for such a licensee to do so before November 23, 1983, to allow it to act before its authority expires. *See* § 2.301. Licensees should also note that their licenses will not expire on that date. Section 192 simply states that the Commission's authority to issue a new temporary operating license, if it finds that the applicant is not prosecuting its application for the final operating license with due diligence. *See* § 2.306. Finally, where the Commission has issued a new temporary operating license before December 31, 1983, and, subsequently, the licensee requests an amendment to that license, this provision does not preclude the Commission from amending that license after December 31, 1983.

Paperwork Reduction Act Statement

This proposed rule contains no new or amended requirements for recordkeeping, reporting, plans or procedures, applications or any other type of information collection reviewable by the Office of Management and Budget under the Paperwork Reduction Act.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these proposed amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 2 and 50 is contemplated.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Inter-governmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135). The provisions of subpart C also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133).

2. A new Subpart C is added to 10 CFR Part 2 to read as follows:

Subpart C—Procedures under Section 192 for the Issuance of Temporary Operating Licenses.

§ 2.300 Scope of subpart.

This subpart prescribes the procedures for issuing a temporary operating license and specifies the framework for Commission determinations. These procedures apply in any proceeding where an applicant has applied for a final operating license for a utilization facility (licensable under sections 103 or 104b. of the Atomic Energy Act (Act) and otherwise requiring a licensing hearing pursuant to section 189a.) and the applicant, pursuant to section 192 of the Act and § 50.57(d) of this chapter, petitions the Commission for a temporary operating license authorizing fuel loading, testing, and initial low power operation (or for an amendment authorizing operation at an increased power level), pending action by the Commission on the application for the final operating license.

§ 2.301 Filing of petition and accompanying affidavits.

(a) Before November 23, 1983, an applicant for an operating license may file a written petition for a temporary operating license with the Commission for each such facility. The applicant must serve the petition, including the accompanying affidavits, on all parties to the proceeding for the issuance of the final operating license. The applicant may file any such petition at any time after the documents called for by section 192 of the Act and § 50.57(d) of this chapter are issued.

(b) The initial petition for a temporary operating license for each such facility shall, in accordance with section 192 of the Act and § 50.57(d) of this chapter, be limited initially to a specified time and to a power level not to exceed 5 percent of the facility's rated full thermal power for that specified time. After the Commission issues a temporary operating license for any such facility, the licensee may file subsequent petitions with the Commission, using the procedure described in paragraph (a), requesting the Commission to amend the temporary operating license to allow facility operation at incremental stages beyond the initial 5 percent level for specified times, up to and including operation at full power, pending completion of the proceeding on the final operating license.

(c) The Commission has full discretion to determine the initial power level up to 5 percent and the incremental increases in power levels it will authorize and the period for which the authorization is granted. It will not grant a temporary operating license or an amendment to that license for a period lasting beyond the date the final operating license is granted, and the temporary operating license and any amendments to that license will expire when the final operating license is issued.

§ 2.302 Contents of affidavits.

The applicant's petition for a temporary operating license or an amendment to that license shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the issuance of the temporary operating license or the amendment to that license. Any such affidavit and any affidavit filed in response shall state separately the specific facts and arguments and include the exhibits upon which the person relies. The facts asserted in any affidavit filed shall be sworn to or afirmed by persons having knowledge of those facts, and a statement to this effect shall affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would be available to substantiate orally the facts asserted, as the Commission deems appropriate. Any such affidavit shall be accompanied by a list of documents relied on to support the facts stated in the affidavit and the place where such documents, other than those issued by the Commission's staff, are available for inspection.

§ 2.303 Notice of petition.

The Commission will promptly publish notice off each petition for issuance of a temporary operating license and any subsequent petitions for amendments to that license in the **Federal Register** and in such trade or news publications as the Commission deems appropriate in order to give reasonable notice to persons who might have a potential interest in the grant of such a temporary operating license or an amendment to that license. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the **Federal Register.** The Commission thereafter will act as expeditiously as possible to reach a determination on such petitions.

§ 2.304 Responsive affidavits.

Responsive affidavits in opposition to the petition shall be accompanied by a short and concise statement of the material facts as to which it is contended that there exists a substantial issue concerning the issuance of the temporary operating license or an amendment to that license. Any responsive affidavit and any accompanying statement shall be served on all parties to the proceeding for the issuance of the final operating license.

§ 2.305 Commission authorization.

(a) Issuance of a temporary operating license or an amendment to that license shall be pursuant to a final order of the Commission itself which recites the reasons for such authorization as called for in section 192 of the Act and § 50.57(d) of this chapter.

(b) The requirements of section 189a. of the Act with respect to the issuance of or an amendment to a utilization facility license shall not apply to the issuance of or an amendment to a temporary operating license. Thus, subpart A of this part does not apply to the consideration of a petition for the issuance of or an amendment to such a temporary operating license; and only §§ 2.701, 2.702, 2.708–2.713, 2.758 and 2.772 of subpart G of this part apply to the consideration of such a petition.

§ 2.306 Hearing on the final operating license.

(a) Issuance of a temporary operating license under section 192 of the Act and § 50.57(d) of this chapter shall not prejudice the right of any party to a proceeding for the issuance of the final operating license to pursue properly admitted issues in a hearing required pursuant to section 189a. of the Act. Failure to assert any ground for denial or limitation of such a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. No party shall argue the issuance or denial of a temporary operating license by the Commission as support for its position in a proceeding for the issuance to the final operating license.

(b) Any hearing on the application for the final operating license for a facility required pursuant to section 189a. of the Act shall be concluded as promptly as practicable. The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. The Commission may suspend the license for other public health and safety or common defense and security reasons.

§ 2.307 Notification to the Commission.

Any party to a hearing required pursuant to section 189a. of the Act on the final operating license for a facility for which a temporary operating license has been issued under section 192 of the Act and § 50.57(d) of this chapter, and any member of the Atomic Safety and Licensing Board conducting such a hearing, shall promptly notify the Commission of any infromation that:

(a) The terms and conditions of the temporary operating license are not being met; or that

(b) Such terms and conditions are not sufficient to provide reasonable assurance that operation of the facility will provide adquate protection to the public health and safety and to the environment during the period of the facility's temporary operation.

§ 2.308 Use of informal procedures.

The Commission ordinarily will not use formal adjudicatory procedures in issuing a temporary operating license and will develop informal procedures case-by-case to resolve particular issues as they arise.

§ 2.309 Enforcement.

The Commission may modify, suspend or revoke a temporary operating license, or impose a civil penalty pursuant to sections 186 and 234 of the Act and subpart B of this part.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 U.S.C 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.10 (b) and (c) and 50.54, are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 50.57 of 10 CFR Part 50, a new paragraph (d) is added to read as follows:

§ 50.57 Issuance of operating license.

* * * * *

(d)(1) *Temporary operating license.* An applicant for an operating license, in a case where a hearing is required in a pending proceeding for the final operating license for a facility required to be licensed under sections 103 or 104b. of the Act, pending final action by the Commission on the application for the final operating license, may petition the Commission by a written motion, pursuant to section 192 of the Act and this paragraph for (i) a temporary operating license for the facility authorizing fuel loading, testing, and operation at up to 5 percent rated full thermal power for a specified time and (ii) an amendment to the temporary operating license requesting for a specified time an incremental increase of the power level beyond that initially granted by the Commission up to full power. The Commission has full discretion to determine the initial power level up to 5 percent and the incremental increases in power levels it will authorize and the period for which the authorization is granted. It will not grant a temporary operating license or an amendment to that license for a period lasting beyond the date the final operating license is granted, and the temporary operating license and any amendments to that license will expire when the final operating license is issued.

(2) The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (i) the report of the Advisory Committee on Reactor Safeguards (ACRS) required by subsection 182b. of the Act; (ii) the initial safety evaluation report (SER) on the application by the regulatory staff and the staff's first supplement to the SER prepared in response to the ACRS report; (iii) the staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; and (iv) a State, local, or utility emergency preparedness plan for the facility.

(3) Each petition for the issuance of a temporary operating license, or for an amendment to that license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment to that license.

(4) The Commission will publish a notice of each such petition in the **Federal Register** and in such trade or news publications as it deems appropriate to give reasonable notice to any persons who might have a potential interest in the grant of such a temporary operating license or amendment. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the **Federal Register**.

(5) With respect to any such petition, the Commission may issue a temporary operating license, or subsequently amend the license to authorize temporary operation at a specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that:

(i) in all respects, other than the conduct or completion of any required hearing, the requirements of law are met;

(ii) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and to the environment during the period of temporary operation; and

(iii) denial of the temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license and the date on which a final operating license for such facility would otherwise be issued under the Act.

(6) Any final Commission order authorizing the issuance of any temporary operating license or an amendment to that license pursuant to section 192 of the Act and this paragraph will recite with specificity the reasons justifying the findings required by that section and this paragraph, and will be transmitted upon its issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(7) The temporary operating license will become effective upon its issuance and will contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension.

(8) The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence.

(9) The authority to issue new temporary operating licenses under section 192 of the Act and this paragraph expires on December 31, 1983.

The views of Commissioners Gilinsky and Asselstine follow.

Dated at Washington, D.C. this 4th day of April, 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary to the Commission.

Commissioner Gilinsky's Separate Views Regarding the Proposed Rule on Temporary Operating Licenses (Amendments to 10 CFR Parts 2 and 50)

April 1, 1983.

I have voted against the Temporary Operating License rule because of the Commission's decision to exempt Temporary Operating License proceedings from the *ex parte* and separation of functions rules. "This would mean that the Commission's staff, applicants and intervenors would be free to contact individual Commissioners as well as the Commission's Office of General Counsel and Office of Policy Evaluation to argue their respective position on the temporary operating license." (A sentence of explanation which appeared in the penultimate draft and which the Commission was too modest to leave in the final version.)

This decision is but another example of the Commission's deep-seated hostility toward informing the public and involving it in NRC's proceedings. The decision is incompatible with the basic notions of fairness which underlie the *ex parte* rules since the temporary operating license issues will inevitably be quite similar to the issues in the operating license hearing which will be going on at the same time. As has so often happened, the course chosen by the Commission is likely to be self-defeating: it is bound to result in endless litigation.

Additional Views of Commissioner Asselstine

I strongly disagree with the Commission majority's decision *not* to apply the provisions of 10 CFR Sections 2.719 and 2.780, relating to separation of functions and *ex parte* communications, as part of the procedural requirements for implementing the temporary operating license authority in Section 192 of the Atomic Energy Act of 1954, as amended.

In all likelihood, the issues that will be raised before the Commission in the temporary operating license proceedings under the provisions of Section 192 will be similar to, or the same as, the issues being adjudicated in the hearing in the final operating license proceedings. By permitting the NRC staff and the applicant, among others, to make informal off-the-record contacts with the Commission on these issues during the temporary operating license proceedings, the Commission majority's proposed rule presents a grave risk of contaminating the formal on-the-record operating license proceeding. I do not believe that this risk of contaminating the final operating license proceeding can be avoided easily if informal, off-the-record contacts on similar issues arising in the temporary license proceedings are permitted. In order to assure procedural fairness in our operating license proceedings, I would apply our regulations relating to separation of functions and *ex parte* communications to temporary operating license proceedings, just as we now do for final operating license proceedings.

[FR Doc. 83-9050 Filed 4-5-83; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 10, 15, 21, 145, 147, 155, 166, and 170

Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements

AGENCY: Commodity Futures Trading Commission

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing rules to implement recent amendments to the Commodity Exchange Act ("Act") which establish four new categories of persons who must be registered with the Commission. Specifically, the Futures Trading Act of 1982 has amended the Act generally to require the registration of introducing brokers and the associated persons ("APs") of introducing brokers, commodity trading advisors, and commodity pool operators. The Commission is accordingly proposing rules and rule amendments which would establish registration requirements and procedures for those new categories of registrant, prescribe minimum financial, reporting, and recordkeeping requirements for introducing brokers, create certain exemptions from registration, change the fees charged for registration with the Commission, and specify appropriate regulatory responsibilities, such as trading standards, for those new categories of registrant.

DATE: Comments must be received by May 6, 1983.

ADDRESS: Comments on the proposal should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Attention Secretariat.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Assistant Chief Counsel, or Lawrence B. Patent, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is proposing rules and rule amendments to implement recent modifications to the Commodity Exchange Act which require the registration of introducing brokers and the associated persons of introducing brokers, commodity trading advisors ("CTAs"), and commodity pool operators ("CPOs"). Specifically, the Futures Trading Act of 1982 (Pub. L. No. 97-444, 96 Stat. 2294) amends Sections 4d, 4f, and 4k of the Act [1] to require, *inter alia*, those persons who could formerly be characterized as "agents" of futures commission merchants ("FCMs") to register with the Commission as introducing brokers and to require the registration of individuals engaged in the solicitation of customers, discretionary account clients, or pool participants (or the supervision of any person or persons so engaged) to register as associated persons.

Prior to the enactment of the Futures Trading Act of 1982, the Commodity Exchange Act allowed FCMs to operate through networks of unregistered "agents" whose principal function was to procure customer business. [2] The clearing (or "carrying") FCM which handled such business on a "fully-disclosed" basis often attempted to disavow any responsibility for violations of the Act committed by these agents,[3] even though customers may have viewed the agent and the FCM as one entity and did not distinguish between services provided by the agent and those provided by the FCM.[4] Congress recognized that a registration requirement would ensure that individuals or firms who were formerly engaged as agents would be subject to the same fitness requirements that apply to other Commission registrants who deal with commodity customers.[5] Thus, the Commission's legislative proposal to Congress would have required agents engaging in the activities described above to register as associated persons of the FCM for whom they procured business.[6] Although Congress ultimately determined that agents should instead be required to register as introducing brokers or as APs of a futures commission merchant, it was the intent of Congress to eliminate the existing regulatory disparity whereby certain individuals were required to register as associated persons while others escaped the Commission's direct scrutiny by being designated as "agents" of FCMs.[7]

The new legislation defines the term "introducing broker" to mean:

> any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.[8]

Accordingly, and as discussed elsewhere in this **Federal Register** notice, the Commission is proposing regulations which would delineate, consistent with the amendments to the Act and pursuant to the Commission's general rulemaking authority, the permissible activities and corresponding obligations of introducing brokers and which would require certain commodity trading advisors to register as introducing brokers. The Commission has not, however, specifically addressed in this **Federal Register** notice the extent of an FCM's responsibility for accounts which it carries on a fully-disclosed basis because it does not view the Futures Trading Act of 1982 as having altered the law in this regard.

Prior to the enactment of the Futures Trading Act or 1982, only those persons who were associated with futures commission merchants ("FCMs") in certain specified capacities were required to register as associated persons.[9] That legislation, however, has extended the AP registration requirement to the sales and supervisory personnel of introducing brokers, CTAs, and CPOs, in order to "make the

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[1] 7 U.S.C. 6d, 6f, 6k, *as amended by* Pub. L. No. 97-444 sections 207, 208, 212.

[2] S. Rep. No. 384, 97th Cong., 2d Sess. 111 (1982); H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 133 (1982).

[3] S. Rep. No. 384 at 40; H.R. Rep. No. 565 (Part 1) at 49; 36 FR 28110, 28111 (December 1, 1971).

[4] S. Rep. No. 384 at 70.

[5] S. Rep. No. 384 at 111; *see* H.R. Rep. 565 (Part 1) at 49.

[6] *See, e.g.*, S. Rep. No. 384 at 40, 111.

[7] H.R. Rep. No. 565 (Part 1) at 49 (1982).

[8] Futures Trading Act of 1982, section 201(1), *amending* Section 2(a) of the Act (7 U.S.C. 2).

[9] Section 4k of the Act, 7 U.S.C. 6k (Supp. V 1981) (*amended by* Futures Trading Act of 1982, Pub. L. No. 97-444, section 212).

[Commission's] registration program more consistent * * * [by] requir[ing] persons who essentially function in the same capacity as persons associated with futures commission merchants to register as associated persons" and to permit the Commission to conduct fitness checks to uncover past misconduct which may render an applicant unfit for registration as an AP.[10] In order to implement the intent of that legislation, the Commission is proposing to extend to these new associated persons the "sponsorship" and fingerprinting requirements which presently apply to the APs of futures commission merchants.

The Commission is proposing, in § 1.57(b), that any person who, directly or indirectly, is compensated either (1) on a per-trade basis, or (2) for the referral of customers to an FCM (*e.g.*, a "finder's fee"), be required to register under the Act as an introducing broker. An FCM, as floor broker, an associated person of an FCM, or an associated person of an introducing broker would be exempt from that registration requirement. The Commission is also proposing that an introducing broker would have to register under the Act as a CTA if it either (1) directs a client's commodity interest account, or (2) guides the client's commodity interest trading by means of a systematic program that recommends specific transactions. *See* proposed § 4.14(a)(6). If those two proposals are adopted, persons currently operating as "agents" of FCMs may have to register as both introducing brokers and as CTAs. The Commission is also aware that if these proposals are adopted, several presently-registered CTAs may have to register as introducing brokers as well, unless they modify the form and manner in which they are compensated. The Commission believes that these proposals are consistent with the intent of Congress, since the Commission notes that, in enacting the Futures Trading Act of 1982, Congress did not provide a general exclusion from the definition of "commodity trading advisor" for introducing brokers comparable to that provided for futures commission merchants and floor brokers.

The Commission has proposed few restrictions on the operations and activities of introducing brokers. Proposed § 1.57(a) states that each introducing broker would have to open and carry each customer's account with a carrying FCM on a fully-disclosed basis, and that each introducing broker would have to transmit promptly for execution all customer orders to either a carrying FCM or to a floor broker, if the introducing broker "gives up" the name of its carrying FCM. Although an introducing broker cannot carry a regulated customer account, the proposed regulations contain no restrictions upon an introducing broker's ability to trade for its own account or to carry proprietary accounts or accounts in non-regulated commodities (*i.e.*, foreign futures). The Commission is concerned, however, that it may not be appropriate for introducing brokers to have any "back office" operations whatsoever.[11] The Commission is, therefore, requesting specific comment as to whether there should be additional restrictions upon the operations and activities of introducing brokers and, in particular, whether introducing brokers should be permitted to carry any accounts other than the firm's own house account.

The Commission is, however, proposing to restrict the operations and activities of introducing brokers in the options area. The Commission's position is that introducing brokers may not solicit or accept orders for "dealer" options, and that introducing brokers may not solicit or accept orders for exchange-traded options until the National Futures Association ("NFA") has a program in place to supervise such activity. This position is consistent with the Commission's commitment to Congress, which is required by statute, to assure that the options pilot program is limited so that it may be regulated successfully.

The Commission's proposed minimum adjusted net capital requirement for introducing brokers would be $25,000 ($50,000 for each introducing broker which is not a member of a designated self-regulatory organization ("DSRO")). *See* proposed § 1.17(a)(1)(ii). The Commission has been advised that NFA's bylaws will be amended to provide for the membership category of introducing broker and further provide that no NFA member may carry an account, accept an order or handle a transaction in commodity futures contracts, for or on behalf of any non-member of NFA or suspended member that is required to be registered with Commission an introducing broker, and that is acting in respect to the account, order or transaction for a customer, a commodity pool or participant therein, client of a commodity trading advisor, or any other person, unless (a) such member of NFA is a member of another futures association registered with the Commission under Section 17 of the Act, or is exempted from this prohibition by an NFA Board resolution, or (b) such suspended member is exempted from this prohibition by the NFA Appeals Committee.[12] The effect of the change in NFA's bylaws would mean that introducing brokers would generally become NFA members, so that the minimum capital requirement for introducing brokers would effectively be $25,000. By comparison, the minimum adjusted net capital requirement for FCMs is $50,000 for those which are members of a DSRO, and $100,000 for non-members.[13]

The Futures Trading Act of 1982 contains certain exemptions from registration. The Commission is proposing three additional exemptions, contained in proposed § 3.12(h), as follows:

1. A registered CPO need not re-register in oder to be an associated person of a CTA;

2. A registered CTA need not re-register in order to be an associated person of a CPO; and

3. An individual who is registered with the National Association of Securities Dealers as registered representative or as registered principal need not register as an associated person of a CPO in order to solicit funds, securities or property for a participation in a commodity pool, or to supervise any person or persons so engaged.

The Commission is proposing to modify the prohibition on dual and multiple associations of associated persons so that an associated person would only be prohibited from having more than one affiliation with the same category of registrant. Thus, an individual could be an associated person of one firm in each of the following categories: FCM, introducing broker, CTA, and CPO. As a consequence, it will be possible for an individual to be employed by four separate firms as an associated person, as long as no two of the firms in the

[10] S. Rep. No. 384, 97th Cong., 2d Sess. 39 (1982); *accord*, H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 48–49 (1982).

[11] A securities introducing broker is subject to greater restrictions in these areas. *See* 17 CFR 240.15c3–1(a)(2) (1982).

[12] The Commission notes that NFA has already amended its Articles of Incorporation to make introducing brokers eligible for membership in NFA.

[13] The Commission is aware that a securities introducing broker is subject to a minimum dollar requirement of net capital of $5,000. the Securities and Exchange Commission ("SEC") adopted a requirement of $2,500 in 1965, raised it to $5,000 in 1975, and it has remained unchanged since then. The Commission is also aware, however, that a securities introducing broker is required to maintain the higher of the minimum dollar amount or 6⅔ percent of aggregate indebtedness, which could require such a firm to maintain more than $25,000 of net capital.

same registration category. *See* proposed § 3.12(f).

The Commission is proposing a temporary rule, proposed § 3.12–a(T), to allow associated persons of FCMs to become associated persons of a CTA, CPO or introducing broker without re-registration. This temporary "transfer" provision would apply to any associated person of an FCM who is so registered on the effective date of § 3.12–a(T). Section 3.12–a(T) would expire 180 days after it becomes effective. A major purpose of the provision would be to allow those person currently associated with an FCM through an agent to become associated persons of an introducing broker, without re-registration, when the agent for whom they work becomes registered as an introducing broker.

The Commission is proposing substantial revisions to the registration fee schedule, which for the first time would include a fee for the newly-added principals of a firm. The actual fee levels would be subject to adjustment as the staff develops further information about the Commission's registration processing costs. *See* proposed § 3.3.

Persons intending to file applications for registration as introducing brokers should be aware that the Commission is considering delegating the function of registering introducing brokers and their associated persons to the NFA, in accordance with statutory authority provided in the Futures Trading Act of 1982.[14] The Commission is specifically requesting comment on this issue.

The Commission believes that two other portions of the regulations not included herein will need to be amended to include references to introducing brokers and the new categories of associated persons. They are Part 12, which governs reparations proceedings, and Part 180, which governs arbitration proceedings. Since there are ongoing rulemaking proceedings affecting those parts of the regulations,[15] the Commission is not proposing the text of specific amendments thereto at this time. The Commission expects to include references to introducing brokers and the new categories of associated persons in those rules when rules are adopted for introducing brokers and the new categories of associated persons. The Commission is, accordingly, specifically requesting comments on the appropriateness of any such amendments.

II. Registration

A. Introducing Brokers

The Commission is proposing to establish registration requirements for introducing brokers which would be essentially identical to the procedures for the registration of FCMs. Proposed § 3.15. Specifically, the Commission is proposing to require each applicant for initial registration as an introducing broker to file a Form 7–R, accompanied by a Form 1–FR containing certain financial information [16] and by a Form 8–R and a fingerprint card for those of the applicant's principals who do not already have a current Form 8–R (and, in appropriate cases, a fingerprint card) on file with the Commission. Proposed § 3.15(a). The Commission is also proposing to require the filing of a Form 8–R and a fingerprint card for newly-added principals of an introducing broker. Proposed § 3.15(c). As discussed below, this provision would parallel proposed changes to the applicable filing requirements for floor brokers and the principals of FCMs, CTAs, and CPOs. Applications for renewal of registration, however, would require only the annual filing of a Form 7–R. Proposed § 3.15(b).[17]

The legislative history of the Futures Trading Act of 1982 makes clear that Congress intended to elminate the former unregistered statutory category of "agents" of FCMs and to require those persons who performed the types of activities traditionally engaged in by agents to register with the Commission as introducing brokers.[18] Historically, agents have carried all of their accounts on a fully-disclosed basis with an FCM which provided "back office" services for those accounts and as such, was responsible for compliance with the minimum financial, recordkeeping, and reporting requirements established by the Commission and its predecessor agency, the Commodity Exchange Authority ("CEA").[19] The FCM also provided confirmation, purchase and sale, and monthly statements (as well as any cash remittances) directly to the customers which had been "introduced" by the agent to the carrying FCM. Generally, the agent was compensated by the FCM on a per-trade basis—*i.e.*, the agent would in some manner be allocated a percentage of the commissions charged by the FCM on the trades made by the agent's customers.

In view of the express Congressional intention to require the registration as an introducing broker of those persons who would continue to operate in the same manner as an agent of an FCM, the Commission is proposing generally that any person who receives per-trade compensation—whether from a futures commission merchant (such as in the form of "split" commissions) or from a customer (*e.g.*, by the monthly debiting of the customer's account)—be required to register with the Commission as an introducing broker. Proposed § 1.57(b). This proposal is intended to effectuate the Congressional intent that persons who were formerly agents must now register an introducing brokers or as associated persons of a futures commission merchant. The Commission is further proposing in § 1.57(b) to require registration as an introducing broker by any person who is compensated for the referral of customers to an FCM. Specifically, the Commission is of the opinion that the phrase "soliciting or accepting orders," as it is used in Section 2(a) of the Act, must be construed to encompass not just the literal solicitation or acceptance of customers' orders, but also the solicitation of customers or acceptance of their orders for referral to an FCM for the institution of a trading relationship and the execution of those orders.[20]

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[14] *See* Futures Trading Act of 1982, Pub. L. No. 97–444, sections 224(6), 233(5), 96 Stat. 2315, 2321, which adds new Sections 8a(10) and 17 (*o*) to the Commodity Exchange Act (to be codified at 7 U.S.C. 12a(10) and 21 (*o*).

[15] 48 FR 6720 (February 15, 1983) (reparations) and 46 FR 60834 (December 14, 1981) (arbitration).

[16] *See* proposed §§ 1.10(a)(2), 3.15(a)(1).

[17] Section 4f(1) of the Act provides that the registrations of FCMS, floor brokers and introducing brokers "shall expire on December 31 of the year for which issued or at such other time * * * as the Commission may rule, regulation, or order prescribe * * * ." 7 U.S.C. 6f(1), *as amended by* Section 208 of the Futures Trading Act of 1982, 96 Stat. 2302. The Commission has previously deferred the registration expiration dates of registered FCMs and floor brokers from December 31, 1982 to March 31, 1983 and from December 31, 1983 to March 31, 1984. 47 FR 52954 (November 23, 1982). The Commission contemplates that it will make permanent this April 1-March 31 cycle when it adopts revisions to the Form 7–R to reflect the registration requirements established by the new legislation. With respect to introducing brokers, however, the Commission anticipates that it will require introducing brokers to file their applicatins for renewal of registratin on or before June 30 of each year, the expiration date presently in effect for CTAs and CPOs.

[18] *See, e.g.*, H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 49, 87 (1982); S. Rep. No. 384, 97th Cong., 2d Sess. 40–41, 70, 87, 111 (1982); *Hearings on S. 2109 Before the Subcommittee on Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition, and Forestry*, 97th Cong., 2d Sess. 222 (1982) (testimony of Edmund R. Schroeder); *id* at 542 (statement of Edmund R. Schroeder).

[19] *See, e.g.*, 17 CFR 1.17, 1.33–1.36. Furthermore, because an agent was not authorized to accept customer funds, it was excused from compliance with the Commission's and the CEA's segregation regulations (17 CFR 1.20–1.30, 1.32). *See generally* 36 FR 22810, 22811 (December 1, 1971) (abolition of "§ 1.31a broker").

[20] In this connection, the Report of the Commission's Advisory Committee on Commodity Futures Trading Professionals, in discussing the AP registration requirements enacted in 1974, noted

Similarly, the Commission believes that persons who are currently compensated on a per-trade basis or by a referral fee as described above would be deemed to be the "agent" of a futures commission merchant for the purpose of the acceptance of those customer orders. As such, any person who continues to engage in those activities would be within the definition of, and generally required to register as, an introducing broker.

Furthermore, the Commission views the forms of compensation discussed above as typical of an FCM-agent relationship and thus believes it is appropriate to require those persons who continue to be compensated in this fashion to register as introducing brokers unless they are registered as a futures commission merchant, floor broker, or an AP of a futures commission merchant or of an introducing broker. Although the Commission has not proposed an exemption from this rule for commodity pool operators, the Commission anticipates that its proposal generally would not apply to CPOs insofar as they do not ordinarily receive per-trade compensation from either FCMs or from pool participants nor are they compensated for the referral of customers (*i.e.*, the pool itself) to a particular FCM. Moreover, the Commission does not view the pertinent activities of CPOs and their APs—the solicitation of funds, securities, or property for a participation in a commodity pool—as equivalent to the customer solicitation activities formerly engaged in by agents. For example, whereas an agent or an introducing broker may solicit customers' accounts, a CPO solicits participations in a commodity pool and may accept funds, securities, or other property only in the name of the pool. Thus, the Commission does not believe that its proposal will significantly affect the operations and activities of most CPOs.

The Commission is aware that its proposal would, if adopted, require certain commodity trading advisors either to modify the form and manner in which they are compensated by their customers or to register as introducing brokers. In this regard, the Commission notes that, in enacting the Futures Trading Act of 1982, Congress did not provide a general exclusion from the definition of "commodity trading advisor" for introducing brokers comparable to that provided for futures commission merchants and floor brokers.[21] The Commission therefore believes that it would be contrary to the statutory design to allow those commodity trading advisors who are compensated in the manner described above and who are, therefore, the functional equivalent of introducing brokers to avoid registration and the corresponding responsibilities of an introducing broker merely by registering as commodity trading advisors.

Section 2(a) of the Act defines the term "commodity trading advisor", in pertinent part, to mean "any person who, for compensation or profit, engages in the business of advising others * * * as to the value or advisability of trading in any contract of sale of a commodity for future delivery * * *."[22] As noted above, introducing brokers—unlike FCMs and floor brokers—are not excluded from the definition of a CTA even if their advisory activities are "solely incidental to the conduct of their business or profession." Thus, absent an appropriate exemption, an introducing broker would also be required to register as a commodity trading advisor, even where the introducing broker's advice was limited to analyses of market conditions and the issuance of generalized recommendations to purchase or sell particular futures contracts. The Commission is therefore proposing to exempt from CTA registration those introducing brokers who neither direct customers' accounts[23] nor guide customers' accounts by means of a systematic program that recommends particular transactions. Proposed § 4.14(a)(6).

B. Associated Persons

The amendments to the Act also establish three new categories of associated person. Thus, for the first time, APs of commodity trading advisors and commodity pool operators will be required to register as such. Furthermore, individuals who formerly would have been associated with an FCM through an "agent" as an AP of that FCM will now be required to register as APs of introducing brokers.[24] and is now proposing to apply those standards and requirements to all categories of associated persons [25] and is now proposing to apply those standards and requirements to all categories of associated persons.

Sponsorship. When it adopted the AP sponsorship and fingerprinting requirements for APs of FCMs, the Commission indicated that:

> The new sponsorship requirements are necessary to establish a uniform industry-wide minimum standard for pre-employment evaluation of associated persons; to insure that all FCMs develop programs that will result in the overall upgrading of APs registered with the Commission; to implement fully the provisions of the Commodity Exchange Act that require an individual to be registered as an associated person of a particular FCM; and to reduce a regulatory burden by eliminating the present biennial renewal requirement for all APs and by substituting therefor registration for as long as the person remains associated with a specified registered FCM or its agent. The fingerprinting requirements are necesary to permit improvements in the Commission's background checking of applicants for registration, to permit positive identification of certain individuals with common names, to reduce the number of applications filed by individuals who are unfit for registration, and to facilitate fitness reviews of registrants on a spot and periodic basis.[26]

The Commission believes that these considerations are equally applicable to the APs of CTAs, CPOs, and introducing brokers and is proposing to amend § 3.12 of its regulations to achieve these goals. Thus, an applicant for registration as an associated person would not be registered as such unless that individual is associated with a "sponsor," which is defined in proposed § 3.1(c) to mean the FCM, CTA, CPO, or introducing broker "which makes the certifications required by [§ 3.12] * * * for the registration of an associated person * * *" An AP registered in accordance with those procedures would, however, generally remain registered as long as he remained associated with that sponsor as an associated person and the sponsor itself remained registered. Proposed § 3.12(b).

As indicated above, the Act expressly provides for four different categories (or "capacities") of AP registration. The Act

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that some FCMs employed individuals to direct customers to the firm. Specifically, the Advisory Committee concluded that: "[w]hile these 'introducers' or 'openers' might not handle orders, they should be required to register as associated persons if their compensation from the FCM is based to any extent upon commission revenues generated by the account. It is the incentive of sharing in commissions that creates a potential for misconduct and thus these persons should be required to register. *Report of the Commodity Futures Trading Commission Advisory Committee on Commodity Futures Trading Professionals*, Comm. Fut. L. Rep. (CCH), No. 29, Part II (August 20, 1976) at 20.

[21] Futures Trading Act of 1982, Pub. L. No. 97-444, section 201(2), 96 Stat. 2297-98 (1982).

[22] *Id.*; proposed § 1.3(bb).

[23] Commission rule 4.10(f) (17 CFR 4.10(f)) specifies that term "direct" refers to those agreements "whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization."

[24] Futures Trading Act of 1982, Pub. L. No. 97-444, § 212, 96 Stat. 2303-05.

[25] 17 CFR 3.12; *see* 45 FR 80485 (December 5, 1980); 46 FR 24940 (May 4, 1981).

[26] 45 FR 80485, 80485 (December 5, 1980).

further provides, however, that with two limited exceptions, AP registration in one capacity (*e.g.*, as an AP of an FCM) does not eliminate the need to be separately registered as an AP in another capacity (*e.g.*, as an AP of an introducing broker). With respect to the APs of CTAs and CPOs, the Act does permit an individual to be associated with a CTA or CPO in a capacity which would otherwise require AP registration if that individual is registered "as an associated person of another category of registrant." [27] The Commission has carefully considered and, for the reasons set forth below, declined to propose any further exemptions from AP registration which would be based merely on the fact of AP registration in some other capacity.

Because an AP's registration will generally be co-extensive with his association with the sponsor,[28] an FCM, CTA, CPO, or introducing broker which elected to rely solely on the fact that an AP was registered with another sponsoring employer would be subject to the risk that the AP's association (and simultaneously, the AP's registration) with that employer might be terminated at any time. In such a case, the second employer would be in violation of Section 4k of the Act—which generally makes it unlawful for an FCM, CTA, CPO, or introducing broker to permit an unregistered individual engaging in the activities described therein to be associated with that FCM, CTA, CPO, or introducing broker—as soon as the AP's association with his initial sponsor was terminated, which could, of course, happen without the second employer being aware of that termination.[29]

Secondly, Section 4k of the Act further provides that it is

> unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant *knew or should have known* of facts regarding such associated person that are set forth as statutory disqualifications in Section 8a(2) of [the] Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.[30]

An FCM, CTA, CPO, or introducing broker which must make the certifications necessary to the registration of an associated person will be in a position to know whether one of its employees is subject to a statutory disqualification. By comparison, mere reliance on the fact of an AP's registration would *not* excuse a violation of this provision when the firm with which the AP is to be associated should have, in fact, known of the statutory disqualification. Thus, the Commission believes that there are sound policy reasons for its decision not to extend further the limited exemptions from AP registration now provided by the Act. The Commission further believes that in light of these considerations, a commodity trading advisor or a commodity pool operator may be ill-advised to allow an already-registered AP to become associated with it without first requiring that individual's reregistration as an AP of that sponsoring CTA or CPO.

As indicated above, the sponsor of an AP's application would be required to make certain certifications regarding the applicant for AP registration which are essentially identical to those which must presently be made by FCMs for the registration of an associated person. Specifically, proposed § 3.12(c)(1)(i) would require the sponsor to certify on the Form 8–R being filed as an application for AP registration that the applicant is currently associated with the sponsor or will be so associated within thirty days after the receipt of the notification from the Commission provided by proposed § 3.12(c)(4). Proposed § 3.12(c)(1)(i) would further require the sponsoring FCM to certify that the applicant will not be permitted to act as an AP (as defined in proposed § 1.3(aa)) until registered in accordance with § 3.12.[31]

Proposed § 3.12(c)(1)(ii) requires the sponsoring FCM to make whatever inquiries are necessary to certify that it has investigated and verified the preceding five years of the applicant's education and employment history and that such history is accurately presented in the Form 8–R. This "screening" requirement would not apply, however, in the case of "grandfathered" APs who were registered as such prior to July 1, 1982 and who, at the time of the first expiration of their AP registration subsequent to that date, will remain associated with the sponsor at the time of that expiration. Proposed § 3.12(c)(1)(iii) further requires the sponsor to certify that all of the publicly available information supplied by the applicant on the Form 8–R is accurate and complete to the best of its knowledge, information and belief.[32]

As the Commission has earlier indicated, these "screening" requirements "do no more than make uniform what should be the ordinary and customary practice" for every responsible registrant employer.[33] Furthermore, the Commission anticipates that the continued upgrading of quality overall among registrants will ultimately lower costs by reducing turnover of personnel, lost business due to customer dissatisfaction, and litigation arising from the acts of employees.[34] Although the proposed regulations do not prescribe procedures which must be employed by the sponsor prior to making the required certifications, the Commission contemplates that a sponsor would use methods comparable to those customarily employed by the financial community for sensitive positions. For example, some firms may follow the practice commonly used for registration screening in the securities industry, which is to hire investigative agencies to perform some or all of the screening functions. Although the Commission does not object to such a practice, the proposed regulations make clear that,

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[27] Futures Trading Act of 1982, Pub. L. No. 97–444, § 212, 96 Stat. 2304 (to be codified at 7 U.S.C. 6k(2), (3)).

[28] Proposed § 3.1(b)

[29] The Commission is proposing, however, to continue its present policy and practice of allowing those APs who were registered prior to July 1, 1982 to continue to act as such until their current registrations expire. Thus, for example, an AP of an FCM who was registered in February 1982 and whose registration will not expire until two years after that date would, subject to the reporting requirements of proposed § 3.31(e), be able to be associated with an FCM, CTA, CPO, or introducing broker without having to reregister as such until that registration expires. *See* proposed § 3.1(a).

[30] Futures Trading Act of 1982, Pub. L. No. 97–444, section 212, 96 Stat. 2305 (emphasis added). As used in section 4k(5) of the Act, the term "statutory disqualification" means any of eight enumerated conditions—such as suspension or revocation of a prior registration, a court order barring specified conduct involving commodities or securities, or a recent conviction for felonies such as embezzlement or fraud—specified in the amended provisions of Section 8a(2) of the Act. *See* Futures Trading Act of 1982, Pub. L. No. 97–444, section 224, 96 Stat. 2310–12.

[31] If, after the filing of the Form 8–R, the applicant either fails to become an associated person of the sponsor or if that relationship is terminated, the sponsor must promptly report the fact to the Commission. Proposed § 3.31(c)(1).

[32] The Commission has previously construed this requirement to apply primarily to the questions in the existing Form 8–R which relate to regulatory or judicial sanctions (items 16–21). If, for example, an AP applicant or registrant answered "Yes" in response to any of those questions, the sponsor would be required to make whatever inquiries were necessary to certify that the individual's representations about, and documentation of, the status or disposition of the matter were, in fact, accurate and complete. Further, while proposed § 3.12(c)(1)(iii) would require the sponsor to investigate and document any adverse, publicly available information *which is reflected in the application*, the Commission wishes to emphasize that the regulation would not require the sponsor to obtain negative information regarding the applicant when there is no indication of such in the application. *See* 45 FR 80485, 80489 (December 5, 1980).

[33] 45 FR 18356, 18357 (March 20, 1980); 45 FR 80485, 80488 (December 5, 1980).

[34] *Id.*

ultimately, it is the sponsor's responsibility to assure itself of the accuracy of the representations that are made to the Commission.

The Commission recognizes, however, that were it to require these certifications to be completed prior to the submission of an application for AP registration, the overall processing time could be increased by as much as 4–6 weeks—the amount of time which may be needed by a sponsor to complete its background checks on the applicant. The Commission therefore presently permits a sponsoring FCM to submit a Form 8–R without the required "Sponsor's Certification," thereby allowing the Commission to commence its background checks of the applicant[35] while the sponsor conducts its own screening of the applicant prior to its submission of a completed Sponsor's Certification. *See* Commission rule 3.12(c)(2). The Commission contemplates that the same procedure would be available to all sponsors—whether FCMs, CTAs, CPOs, or introducing brokers—and is not, therefore, proposing any change to that portion of its regulations.

Expedited AP registration procedures. Proposed § 3.12(d) would extend the existing expedited registration procedure which is presently available to certain APs of FCMs to applicants for AP registration in any capacity. Specifically, this expedited procedure would be available to: (1) Any person whose AP registration in another capacity is still in effect so that, for example, an AP of a CTA could use this procedure to become registered without delay as an AP of an FCM; (2) any person whose AP registration in any capacity has terminated within the preceding sixty days; and (3) any person who, on or prior to the first expiration of that person's AP registration subsequent to July 1, 1982, becomes associated with a sponsor which has hired or otherwise employed the AP.

These criteria would differ in certain minor respects from those which are currently applicable to APs of FCMs. In particular, in view of the fact that an individual may be registered as an AP in more than one capacity, the Commission is proposing to allow an AP to use the expedited procedure to become registered with more than one sponsor. By comparison, § 3.12(d)(1) currently provides that an AP whose registration was granted within the preceding year is also eligible for this expedited procedure. This procedure was adopted because Section 4k(2) of the Act specified a minimum one-year duration for certain AP registrations. That requirement of Section 4k(2) has now been repealed.[36] The Commission is therefore proposing to delete this latter provision from the bases of eligibility for the expedited registration procedure contained in § 3.12(d).

An individual who is eligible for expedited registration would be registered as an AP on such person's new sponsor upon the mailing to the Commission of a completed Form 8–S, the one-page "Certificate of Special Registration." The Form 8–S, requires a certification by the sponsor that the individual has been hired or otherwise employed by the sponsor as an AP. The applicant would have to personally certify on that Form that his AP registration in any capacity is neither suspended nor revoked, that he qualifies for expedited registration under the criteria described above, and that, if there is a proceeding pending to suspend, revoke, or condition his registration (or if, within the preceding twelve months, the Commission has permitted the withdrawl of an application for registration), the sponsor has been given a copy of the complaint or letter issued in that proceeding. Proposed §§ 3.12(d) (1), (2). Within sixty days of the filing of the Form 8–S, the AP and the sponsor would have to complete and the sponsor would have to file with the Commission a completed Form 8–R (including the "Sponsor's Certification" described above), the registration fee and, except where these Forms are being filed at the time of the first expiration of that individual's registration as an associated person subsequent to July 1, 1982, a fingerprint card. Proposed § 3.12(d)(3).

Fingerprinting. This exemption from the fingerprinting requirement would also apply to those APs for whom their sponsors elect to file only a Form 8–R (instead of Forms 8–S and 8–R, as required under the expedited procedure) when their registration as associated persons first expires subsequent to July 1, 1982. *See* proposed § 3.12(c)(3).[37] Thus, such an AP would not need to be fingerprinted if he remains associated with that sponsor on and after the first expiration of his AP registration subsequent to July 1, 1982. In all other cases, however, where a Form 8–R is being filed in connection with the registration of an associated person, that Form would have to be accompanied by a fingerprint card, irrespective of whether the individual is applying for registration in the first instance or has retained his AP registration in another capacity. This requirement would, if adopted, merely extend to all associated persons the rule that the Commission now applies to APs of FCMs which requires an applicant for AP registration to be fingerprinted each time he changes his affiliation (unless, or course, his pre-July 1, 1982 registration has not yet expired). *See* Commission rule 3.12 (c)(3), (d)(3). By comparison, floor brokers and the principals of FCMs, CTAs, CPOs, and introducing brokers who are not "grandfathered" are generally required to be fingerprinted only once.

The Commission has previously explained that this increased scrutiny of associated persons was necessary because:

> The FBI check reveals criminal records for a significantly greater percentage of AP applicants than for either floor broker applicants or principals. Further, based upon the Commission's experience through its administrative proceedings against registrants, the volume of complaints received, and the reparations cases which have been brought, it appears that APs are the category of registrant most likely to be involved in activities which bring into question their fitness. Moreover, such activity frequently occurs in a time frame fairly contiguous to the AP's change in firm.[38]

In the absence of contrary evidence, the Commission believes that these considerations would apply equally to all categories of associated person and therefore, that its present practice with respect to APs of FCMs should be extended to all categories of associated persons. The Commission notes, however, that any burden which may result from this requirement would be minimized by the Commission's policy of allowing the simultaneous submission of applications for registration in more than one capacity or the simultaneous use of such an application as a biographical supplement for a new principal, in which cases only one fingerprint card would be required for the same individual. The Commission further notes that § 3.21, which the Commission is now proposing to extend to all categories of registrant, allows the filing of a photocopy of the FBI report in lieu of a fingerprint card in certain cases where the applicant has simultaneously applied for registration in the securities industry.[39] The Commission is further

[35] The Commission screens each applicant and principal with the Federal Bureau of Investigation ("FBI") and the Securities and Exchange Commission and, where necessary, conducts or causes to be conducted further investigations of the individual's fitness.

[36] *See* 7 U.S.C. 6k(2), *as amended by* Futures Trading Act of 1982, Pub. L. No. 97–444, section 212, 96 Stat. 2305.

[37] *See* 7 U.S.C. 6k(2), *As amended by* Futures Trading Act of 1982, Pub. L. No. 97–444, section 212, 96 Stat. 2305.

[38] 45 FR 80485, 80487 (December 5, 1980).

[39] *See id.*

proposing to extend § 3.21 to make it available to any individual whose initial registration in any capacity was granted within the preceding ninety days if that initial registration required the filing of a fingerprint card. Thus, for example, a person who applied for registration as an AP of a CTA and, in connection therewith, submitted a fingerprint card could, within ninety days after registration was granted, apply for registration in another capacity (such as an AP of an introducing broker) and be excused from the otherwise-required filing of a second fingerprint card.

Multiple associations. Commission rule 3.12(f) currently prohibits an AP from being associated with more than one FCM.[40] When it adopted this restriction, the Commission explained that "the obvious difficulties of supervision in such a situation and . . . the inherent possibilities of conflict of interest that might arise if an AP were to have more than one sponsor" outweighed any possible adverse effects upon competition which might result from such a prohibition.[41] In view of the establishment of three new categories of associated person, the Commission is proposing to modify this limitation to provide instead that an AP may be associated with only one registrant in each capacity. Proposed § 3.12(f). Thus, for example, if the Commission's proposal were adopted, an AP could be associated with a futures commission merchant and with a commodity trading advisor but could not, absent an exemption,[42] be simultaneously associated with a second FCM or CTA. The Commission specifically requests comments as to the appropriateness of such a limitation and whether the Commission's rule should be modified further to prohibit all such simultaneous associations other than those expressly permitted by Sections 4K(2) and (3) of the Act for APs of commodity trading advisors and APs of commodity pool operators.[43]

Exemptions from AP registration. Section 4k of the Act, as amended, provides several exemptions from AP registration. For example, an individual registered as an FCM, floor broker, or as an introducing broker need not register as an AP in any capacity.[44] In addition, and as discussed above, the Act provides an exemption from registration as an AP of a CTA or of a CPO for any AP who is registered in another capacity. Finally, the Act also provides that a CPO need not register as an AP of a commodity pool operator and that a CTA need not register as an AP of a commodity trading advisor.[45]

The Commission is proposing to augment these statutory provisions by exempting those individuals who are registered as CPOs from registration as APs of commodity trading advisors. Proposed § 3.12(h)(1). The Commission is similarly proposing to exempt individuals who are registered as CTAs from having to register as APs of commodity pool operators. Proposed § 3.12(h)(2).

The Commission is also proposing to exempt from registration as an AP of a commodity pool operator any individual who is registered with the National Association of Securities Dealers ("NASD") as a registered representative or a registered principal.[46] Proposed § 3.12(h)(3). The Commission has earlier proposed to require the registration, as a commodity trading advisor, of certain persons who solicited customers on behalf of CTAs or CPOs.[47] The Commission's proposed rule, however, would have provided an exemption from that registration requirement to any individual who solicited customers in connection with the public offering of a commodity pool if that offering was made pursuant to the provisions of section 5 of the Securities Act of 1933 and if that individual was associated with a broker or dealer which was registered as such with the Securities and Exchange Commission. As the Commission observed at that time:

> [S]ome CPOs register their pool offerings with the Securities and Exchange Commission ("SEC") and, as part of that process, furnish a written "prospectus" to prospective pool participants containing much of the information required by Commission rule 4.21 * * * In recognition of this practice, the Commission has permitted COPs who choose to provide a prospectus to prospective pool participants to supplement that prospectus to comply with the specific requirements of § 4.21 * * *
>
> The Commission believes that similar considerations may apply to the actual solicitation of pool participants * * *[48]

The Commission has subsequently had occasion to provide a temporary no-action position to certain applicants for AP registration who were associated with registered securities brokers or dealers and who were themselves registered with the NASD as a registered representative or registered principal.[49] In that context, the Commission noted that the fitness investigations conducted by the NASD are similar to those conducted by the Commission and that the Commission and the NASD apply similar standards of registration fitness.[50] Furthermore, inasmuch as the Commodity Exchange Act does not relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 and the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of commodity pool,[51] the Commission comtemplates that a not insubstantial number of persons who would otherwise be required to register as APs of a commodity pool operator will already be registered with the NASD. In view of these considerations, the Commission believes that its proposed exemption will appropriately limit regulatory duplication and overlap by eliminating the need to register the large numbers of individuals who may only occasionally solicit pool participants.

The following examples are intended to illustrate the operation of the Commission's proposed regulations in certain representative situations:

(1) "A", an individual, is registered as an AP of FCM "W" on January 1, 1984 after "W" filed a completed Form 8–R, a fingerprint card, and the $50 registration fee. Proposed §§ 3.12(c); 3.3(a)(3). "A" continues to be associated with FCM "W" but, on June 15, 1985, also decides to become an AP of CTA "X". Although "A" is not required to register as an AP of "X" (Section 4k(3) of the Act), if CTA "X" elects to register "A" as an AP, it may file Form 8–S and "A" will be registered as an AP of CTA "X" upon the mailing of that Form. "X" must then file a complete Form 8–R (*i.e.*, including the Sponsor's Certification), fingerprint card, and the registration fee within 60

[40] *See generally* 48 FR 4650 (February 2, 1983).

[41] 45 FR 80485, 80489 (December 5, 1980) (footnote omitted).

[42] *See* proposed § 3.12(g)(1).

[43] As discussed earlier, new Sections 4k(2) and (3) of the Act expressly exempt from re-registration as an AP of a CTA or of a CPO any individual who is already registered "as an associated person of another category of registrant." Futures Trading act of 1982, Pub. L. 97–444, Section 212, 96 Stat. 2304.

[44] *Id.*, Section 212, 96 Stat. 2303–04. The Act separately provides that an individual who is registered as an AP of an FCM need not register as an introducing broker. *See id.*, section 201(1), 96 Stat. 2297.

[45] *Id., section 212, 96 Stat. 2304.*

[46] *See* ANSD Bylaws, Schedule C, Parts I and II, [1967] NASD Manual (CCH) ¶1102A at 1047–54.

[47] 47 FR 2325 (January 10, 1982). In view of the subsequent amendments to the Act and the rules the Commission is now proposing to implement those amendments, the Commission hereby withdraws that earlier proposal.

[48] *Id.* at 2326.

[49] 47 FR 53764 (November 29, 1982).

[50] *Id.* at 53765 nn. 3 & 4.

[51] Futures Trading Act of 1982, Pub. L. No. 97–444, Section 103, 96 Stat. 2296–97.

days. Proposed § 3.12(d). (If "X" does not elect to re-register "A" as its AP, it must notify the Commission of "A"'s new association on Form 3–R and provide the $10 registration fee. Proposed §§ 3.31(d), 3.3(a) (3). Furthermore, "X" is subject to the risk that FCM "W" may terminate "A"'s employment—and therefore, "A"'s registration—without "X"'s knowledge. In such a case, "X" could be in violation of Section 4k of the Act since "A" would no longer be registered as an AP "of another category of registrant.")

(2) The facts are the same as in Example (1) except that "A"'s association with FCM "W" terminated on May 1, 1985. Because "A"'s registration with "W" terminated within the preceding sixty days (*i.e.*, on May 1), "X" may use Form 8–S (as described in Example 1) to register "A" as an AP of "X". Proposed § 3.12(d).

(3) "B" applies to become an associated person of "Y", which is registered as both an FCM and as an intoducing broker. "Y" has to file only one Form 8–R to register "B" as an AP of an FCM and as an AP of an introducing broker, but the application would have to be accompanied by the registration fee for each capacity. Proposed §§ 3.2, 3.3(a)(7).

(4) "C" applies for registration as an AP of FCM "W". In this connection, "W" files a Form 8–R, fingerprint card, and the $50 registration fee on behalf of "C". (The Sponsor's Certification may be submitted separately at a later date.) Proposed §§ 3.12(c), 3.3(a)(3). Before "C" becomes registered, he decides to become simultaneously associated with "Z", an introducing broker.) "Z" must refile a Form 8–R, fingerprint card, and the $50 registration fee to register "C" as an associated person of an introducing broker. "Z"'s Sponsor's Certification may be filed separately from the new Form 8–R.) Proposed §§ 3.2, 3.12(c), 3.3(a)(3). Alternatively, assume that (C) has become registered as an AP of FCM "W" on April 1, 1984. "Z" can now file Form 8–S (which is effective upon mailing) as long as "C" remains registered as an AP of "W". Proposed § 2.12(d). Although "Z" must thereafter file a complete Form 8–R and the $50 registration fee, "Z" would not have to file a fingerprint card for "C" if "Z" files the Form 8–R on or before June 30, 1985, the 90th day after "C" was registered as an AP of FCM "W". Proposed §§ 3.12(d), 3.21(a)(2).

(5) "D", an associated person of CTA "Y", leaves "Y"'s employment on March 1, "D", may become immediately re-registered as an AP of another CTA, or an an AP of an FCM, CPO, or introducing broker, at any time prior to May 1, (the sixty-first day after March 1st) if his new employer files Form 8–S and thereafter files Form 8–R, a fingerprint card, and the registration fee. Proposed § 3.12(d). On and after May 1, "D's" new employer would have to file a Form 8–R, a fingerprint card, and the registration fee and "D" would not be permitted to act as an associated person until registration is granted. Proposed §§ 3.12(c), 3.12(a).

(6) "E" was registered as an associated person of FCM "W" in May 1982. Under the provisions of former Section 4k of the Act and Commission regulation 1.10b, "E" 's registration was granted for two years and will expire on May 31, 1984. Even though "E" ceased to be associated with FCM "W" in January 1983, he may become associated with another FCM, or with a CTA, CPO, or introducing broker without having to register until May 1984. Proposed § 3.12(a). "E" 's new employer must report "E" 's new association on Form 3–R. Proposed § 3.31(e). (When "E" left "W" 's employment, "W" reported "E" 's termination on Form 8–T. Proposed § 3.31(c).) On or prior to the date that "E" 's "old " two-year registration expires, his new employer must file either the Form 8–S or a complete Form 8–R and the $50 registration fee. If the new employer chooses to file the Form 8–S, it must also file a complete Form 8–R and the registration fee within 60 days. In either case, the new employer does not have to verify "E" 's education and employment history (as presented in the Form 8–R) nor does the new employer have to file a fingerprint card for "E". Proposed §§ 3.12(c)(1)(ii), 3.12(c)(3), 3.12(d)(1), 3.12(d)(3).

(7) "F" is registered as an AP of CTA "Y". While still associated with "Y", "F" accepts an offer of employment with another CTA. His application for registration, filed on Form 8–S, will be rejected if "F" continues to be associated with "Y" because "F" cannot be associated with two sponsors who are registered in the same capacity. Proposed §3.12(f).

"Transfer" of associated persons. The Commission recognizes that a not insubstantial number of APs are associated with FCMs through agents of those FCMs. Absent appropriate relief, those APs would generally remain registered in that capacity (*i.e.*, as persons associated with a futures commission merchant) even if the agent by whom they are employed becomes registered as an introducing broker. In those circumstances, an AP would have to re-register as an AP of the introducing broker if he is to continue to solicit or accept customers' orders or supervise any person or persons so engaged. Similarly, an AP would have to re-register under the sponsorship of the new introducing broker if the FCM which had formerly sponsored that AP terminated its sponsorship (and, with it, the AP's registration) upon the registration of its former agent as an introducing broker. *See* proposed § 3.12(b).

The Commission is therefore proposing to exempt these APs on a one-time basis from certain otherwise applicable registration requirements. Specifically, the Commission is proposing in § 3.12a(T) to allow the "transfer" of any registered AP from an FCM to an introducing broker, a commodity trading advisor, or a commodity pool operator.[52] This "transfer" rule, which would be effective for 180 days, would allow the FCM with whom the APs are presently registered and the introducing broker, commodity trading advisor, or commodity pool operator with whom the APs will thereafter be associated to file a statement with the Commission specifying which APs are to be "transferred" from the FCM to the new sponsor. That statement, which the Commission anticipates will be incorporated into Commission Form 3–R, would also require the transferee registrant (*i.e.*, the introducing broker, commodity trading advisor, or commodity pool operator) to acknowledge that the "transferred" APs will thereafter be registered as APs of that registrant as long as they remain associated with that firm and further, that such transferee shall be fully responsible for the conduct of those APs as if they had been sponsored by that firm.

The Commission's proposal would therefore eliminate the need for each of these APs to be formally re-registered. Specifically, the introducing broker, CTA, or CPO to whom an AP is "transferred" in accordance with § 3.12a(T) would be excused from filing Forms 8–S and 8–R, a fingerprint card, and the registration fee for each of those associated persons. *Compare* proposed §§ 3.3(a)(3), 3.12(c), 3.12(d). Furthermore, the FCM with whom the APs were formerly associated would not have to file a termination notice for each of those associated persons. *Compare* proposed § 3.31(c). The Commission

[52] In view of the new registration requirements for APs of commodity trading advisors and commodity pool operators, the Commission is proposing to make this procedure equally available to permit transfer of such APs of FCMs to CTAs and CPOs. In this regard, the Commission notes that some agents of FCMs are presently registered under the Act as CTAs or as CPOs.

therefore anticipates that its proposal would, if adopted, streamline the transfer process, resulting in substantial savings of time and expense to the industry and the Commission while greatly minimizing the adverse effects upon customers which might otherwise result from the disruption of previously-existing business relationships.

C. Floor Brokers and Principals of FCMs, CTAs, CPOs, and Introducing Brokers

The Commission is proposing to make minor, technical amendments to its rules relating to the filing of a fingerprint card by floor brokers and the filing of a Form 8–R and a fingerprint card by principals of an FCM, CTA, or CPO. When those rules were first adopted in December 1980, the Commission determined to "grandfather" from those requirements any individual who had a "current" Form 8–R (or the former Form 94) on file with the Commission on the date those rules first became effective.[53] It has come to the attention of the Commission, however, that this latter exemption is somewhat broader than originally contemplated in that the definition of "current" contained in § 3.1(b), when read in conjunction with the "grandfather" clauses contained in the regulations relating to the registration of FCMs, floor brokers, CTAs, and CPOs, could be interpreted to allow an individual who had a then-current Form 8–R or Form 94 on file with the Commission on July 1, 1982 to leave the industry for an extended period of time and later return without having to file an updated Form 8–R and fingerprint card. This unintended exception, which is contrary to the Commission's intent, may be of particular significance because the duty to update and periodically correct a registrant's or principal's registration filings would generally be abated when an individual is no longer acting in a registered capacity or as a principal.[54]

The Commission is therefore proposing to amend the definition of the term "current" (proposed § 3.1) and to amend pertinent portions of other of its regulations to require the filing of a Form 8–R and a fingerprint card in the limited circumstances described above.[55] The Commission is also proposing to apply the same standard to the principals of introducing brokers.[56] The Commission wishes to emphasize, however, that it is not proposing to change those regulations which specify that principals or floor brokers who are not so "grandfathered" (and who therefore must be fingerprinted in accordance with the Commission's registration regulations) will, in general, only be required to file one fingerprint card and, except in the case of floor brokers, one Form 8–R.[57]

D. Registration Fees

The Commission is proposing to increase the registration fees for all categories of registrants, to establish a fee for introducing brokers, and to charge a fee for the filing of a biographical supplement (Form 8–R) on behalf of a principal. Proposed § 3.3. Specifically, the fees for registration (both initial and renewal) would be increased from $200 to $300 for FCMs, from $50 to $100 for CTAs and CPOs,[58] and from $20 to $50 for APs and floor brokers. Proposed §§ 3.3(a)(1)–(4). The Commission is further proposing to increase from $6 to $10 the fee for each branch office and to make explicit that this latter charge would apply uniformly to the branch offices to FCMs, CTAs, CPOs, and introducing brokers. Proposed § 3.3(a)(5). The Commission is also proposing to charge $50 for each Form 8–R submitted on behalf of a principal; this latter fee would not be assessed, however, where the same Form 8–R is being used simultaneously to apply for registration as an AP or as a floor broker or where an FCM, CTA, CPO, or introducing broker merely notifies the Commission of the addition of a principal on Form 3–R.[59] Proposed §3.3(a)(6). Finally, the Commission is proposing to continue its present practice of requiring separate registration fees for each registration capacity. Proposed § 3.3(a)(7). Thus, for example, if an individual were simultaneously applying for registration in two capacities (*e.g.*,as an AP of a CTA and as an AP of an introducing broker), the application would have to be accompanied by a fee of $100 for those two registration capacities.

The Commission believes that these fees are both reasonable and equitable. The Commission further believes that its proposal would not result in the adoption of fees which "exceed the actual cost . . . to the Commission"[60] of registering each of the enumerated categories of registrant. The Commission is nonetheless continuing to develop data and information which will allow it to assess more precisely the actual cost to the Commission of registering each category of registrant and will, of course, consider that data and information when it adopts final rules.[61] The Commission notes, however, that the applicability of this schedule of registration fees would be suspended once a registered futures association (such as NFA) assumes the Commission's registration processing responsibilities.[62]

E. Other Registration Regulations

The Commission is proposing to make conforming, non-substantive amendments to certain of its other registration regulations to reflect the addition of the four new categories of registrant. Thus, for example, the Commission is proposing to amend § 3.2, which presently specifies that registration in one category under the Act does not include registration in any other capacity, to emphasize that except as may be provided in the Act or by Commission regulation, registration as an AP in any one capacity (*e.g.*, as an AP of a commodity trading advisor) does not include registration in any other capacity (*e.g.*, as an AP of a futures commission merchant).

The Commission is similarly proposing to amend §§ 3.21 and 3.30 to add appropriate references to introducing brokers and the new categories of associated persons. Section 3.21 allows the filing of a photocopy of an applicant's or principal's fingerprint card and criminal history sheet, if any, received from the FBI in certain instances where the applicant or principal was simultaneously fingerprinted for a position which requires registration both with the Commission and, for example, with a securities industry self-regulatory

[53] 45 FR 80485, 80487 (December 5, 1980). The effective date of those rules was substantially deferred from July 1, 1981 to July 1, 1982. 46 FR 24940 (May 4, 1981).

[54] *See* Commission rule 3.31(b).

[55] *See* Commission rules 3.10(a)(2)(i), (c)(1) (FCMs); 3.11(b)(1) (floor brokers); 3.13(a)(2)(i), (c)(1) (CTAs); 3.14(a)(2)(i), (c)(1) (CPOs).

[56] *See* proposed §§ 3.15(a)(2)(i), (c)(1).

[57] Those persons would, of course, remain subject to the provisions of §3.12, which governs the registration of associated persons, and to the supplemental filing provisions of §3.22. Furthermore, a floor broker would continue to be required to file a Form 8–R to apply for initial registration or for renewal thereof.

[58] The Commission is similarly proposing to charge $100 for the registration of introducing brokers.

[59] Furthermore, and as discussed earlier, the Commission's proposed regulations would generally require only the one-time filing of a Form 8–R for a principal.

[60] Futures Trading Act of 1982, Pub. L. No. 97–444, section 237, 96 Stat. 2326, *amending* Futures Trading Act of 1978, section 26, 92 Stat. 877.

[61] The Commission also intends to provide this data and information to its Congressional oversight committees. *See* H.R. Rep. 97–964, 97th Cong., 2d Sess. 57–58 (1982) (Conference Committee).

[62] *Id.* at 57.

organization.[63] Section 3.30, which merely makes explicit a registrant's or principal's continuing duty to furnish a current address for the receipt of communications from the Commission, would be amended to add references to introducing brokers and to provide that communications from the Commission relating to the registration of an associated person may be addressed to a CPO, CTA, or introducing broker as well as to a futures commission merchant.

Section 3.31, which requires each applicant, registrant, and principal to report changes to the registration information on file with the Commission, would similarly be amended to make those requirements applicable to the four new registration categories. The Commission is also proposing to require any CTA or CPO which allows APs who are already registered in some other capacity to become associated with that CTA or CPO without re-registration to file a Form 3–R to report that association. Proposed § 3.31(d). The Commission hereby gives notice that, although the precise terms are not delineated in § 3.31(d), the Commission is proposing to amend Form 3–R to specify that any such CTA or CPO must make certifications for those newly-added associated persons which would be comparable to those required by proposed § 3.12a–(T). These latter requirements would not apply, however, where the CTA or CPO sponsored the re-registration of the AP in accordance with the provisions of § 3.12 or where the AP's pre-July 1, 1982 registration had not yet expired. *See* proposed §§ 3.31 (d), (e).

Proposed § 3.31(e) is essentially the same as current §3.31(d) and, in conjunction with proposed § 3.12(a), allows any associated person who was registered as such prior to July 1, 1982 and whose registration has not yet expired to change firms without having to re-register. The Commission is proposing to broaden those provisions so as to allow any such AP to be employed not only by an FCM, but also by a CTA, CPO, or introducing broker. The new employer would be required to report that association on Form 3–R but would not have to make certifications comparable to those which would be required under proposed §§ 3.12a–(T) or 3.31(d).[64]

The Commission is also proposing to amend § 3.32(a) to require an introducing broker to re-register in the event of a change in the name of the registrant. A similar requirement already applies to FCMs, CTAs, and CPOs. Finally, the Commission is proposing to incorporate references to introducing brokers into § 3.33, which establishes the procedures for withdrawal from registration.

III. Minimum Financial and Related Reporting Requirements

A. Minimum Adjusted Net Capital Requirement

The Commission's proposals relating to the registration of introducing brokers are designed to fully integrate those persons into the Commission's regulatory framework. Another purpose of the proposals is to eliminate "the current ambiguity and the resulting uncertainties of the regulatory status of agents."[65] Agents are not now directly subject to the Commission's registration authority, but introducing brokers will be directly subject to the Commission's registration authority. Direct regulatory authority over such businesses is needed due to the recent proliferation of such businesses, and concomitant increased contact between such businesses and the public. The Commission recognizes that its authority to register and regulate introducing brokers is intended primarily to close certain regulatory gaps which currently exist and is not intended to facilitate the development of a new segment of the commodity industry nor to facilitate the entry of new firms. In order that the Commission may fully integrate introducing brokers into its regulatory program, Section 4f(2) of the Act has been amended to prohibit registration of introducing brokers who do not meet minimum financial requirements established by the Commission.[66]

The Commission is authorized to establish minimum financial requirements for introducing brokers to insure that they meet their obligations as registrants. Congress stated that a purpose of those requirements should be "to guarantee accountability and responsible conduct of [introducing brokers]."[67] The Commission believes that requiring a registered introducing broker to have a permanent capital base not only would establish a benchmark of economic viability, but would also be an important element of customer protection. The Commission further believes that the proposed minimum adjusted net capital requirement for introducing brokers must be based on several factors: (1) Requiring sufficient capitalization so that an introducing broker will be encouraged to employ the appropriate personnel, resources and equipment to safeguard its stake in the business; (2) insuring that such registrants have a sense of commitment and obligation to their business sufficient to produce responsible, reliable operations; (3) insuring that introducing brokers are not judgment proof; and (4) providing coverage for potential liabilities arising from business operations, customer relations and the handling of proprietary accounts. Another factor which the Commission has considered is its concern that if the adjusted net capital requirement for introducing brokers is set too low, persons who are currently directly supervised by and under the responsibility of FCMs (*i.e.*, associated persons of FCMs) may establish introducing broker firms for which the FCM will have no responsibility. Such a result could lead to a weakening in the current system of supervision and responsibility under the Act, which is directly contrary to the idea behind establishing a comprehensive regulatory scheme for introducing brokers, which is intended to strengthen supervision and responsibility.

The Commission therefore is proposing to amend § 1.17 of its regulations to establish minimum financial requirements for introducing brokers. The Commission, with these factors in mind, has determined to propose a minimum adjusted net capital requirement for introducing brokers of the greater of:

(A) $25,000 ($50,000 for each person registered as an introducing broker who is not a member of a designated self-regulatory organization), or

(B) For securities brokers and dealers, the amount of net capital required by Rule 15c3-1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).[68]

The Commission assumes, however, that all introducing brokers will join the NFA, and that therefore the effective minimum dollar amount of adjusted net capital will be $25,000.

The Commission is aware that the Securities and Exchange Commission

[63] *See* 45 FR 80485, 80487 & n.18 (December 5, 1980).

[64] By comparison, the former employer would be required to report the termination of such an associated person in the same fashion as it reports the termination of any of its APs or principals. *See* proposed § 3.31(c).

[65] H.R. Rep. No. 565, 97th Cong., 2d Sess. 49 (1982). *See also* S. Rep. No. 384, 97th Cong., 2d Sess. 40 (1982).

[66] 7 U.S.C. 6f(2), *as amended by* Futures Trading Act of 1982, Pub. L. No. 97–444, section 208, 96 Stat. 2302 (1983). *See also* H.R. Rep. No. 565 at 48 *and* S. Rep. No. 384 at 40.

[67] *See* S. Rep. No. 384 at 41.

[68] *See* proposed §1.17(a)(1)(ii).

has established a minimum net capital requirement for securities introducing brokers based on the greater of (1) $5,000, or (2) 6⅔ percent of aggregate indebtedness. The Commission believes that the higher minimum dollar amount proposed herein is necessary because introducing brokers in commodities will have fewer restrictions on their activities than is the case for securities introducing brokers. The Commission also notes that securities introducing brokers may be required to maintain net capital of more than $25,000, in order to meet the requirement based on 6⅔ percent of aggregate indebtedness.

The Commission is also proposing that an introducing broker who is not in compliance with the minimum adjusted net capital requirement, or is unable to demonstrate such compliance, would have to immediately cease doing business as an introducing broker until such time as the firm is able to demonstrate such compliance. However, if the introducing broker could immediately demonstrate to the satisfaction of the Commission or its designated self-regulatory organization ("DSRO") the ability to achieve compliance, the Commission or the DSRO may allow the introducing broker up to a maximum of 10 business days in which to achieve compliance without having to cease doing business. If the introducing broker were required to cease doing business because it was undercapitalized, the introducing broker would have to immediately notify each of its customers, and the FCM carrying the account of each customer, that it has ceased doing business. Regardless of whether the introducing broker is forced to cease doing business, the Commission or the DSRO could take action against an introducing broker for non-compliance with any of the provisions of § 1.17. *See* proposed § 1.17(a) (3) and (5).

The proposals relating to an introducing broker's compliance with the minimum adjusted net capital requirement are similar to those in effect for FCMs. *See* proposed § 117(a)(4). However, there is no provision for an introducing broker to transfer all its customer accounts, as there is for an FCM, since customer accounts will not be carried by the introducing broker but will be carried on a fully-disclosed basis by the FCM. The introducing broker would have to immediately notify each of its customers, and the FCM carrying the account of each customer, that it has ceased doing business. The customer and the FCM can then determine how to proceed, and commercial prudence suggests that this circumstance should be addressed in the customer agreement.

B. Computation of Adjusted Net Capital

The minimum amount of adjusted net capital which would have to be maintained by introducing brokers, and what introducing brokers would have to do in the event they failed to maintain that level of adjusted net capital, are set forth in proposed § 117(a), and those requirements have been discussed above. In order to compute its actual adjusted net capital and thus determine whether it is complying with the minimum adjusted net capital requirement, the introducing broker would have to follow the provisions set forth in the remainder of § 1.17. Most of those provisions are not being amended and would apply to introducing brokers as well as FCMs although, as is the case with FCMs, whether any particular provision is relevant to a particular introducing broker depends upon the introducing broker's operations and activities. All introducing brokers should become familiar with all aspects of § 1.17.[69]

Certain definitions applicable only to § 1.17 are contained in § 1.17(b). Generally, if an introducing broker is also a securities broker or dealer, assets and liabilities which are related to the firm's securities business would be treated in accordance with the SEC's financial rules, unless there is a specific provision for different treatment in § 1.17.[70] *See* § 1.17(b)(1).

The definition of a proprietary account for purposes of § 1.17 is more restrictive than the general definition of a proprietary account contained in § 1.3(y). For purposes of § 1.17, a proprietary account means only a commodity futures or option account carried on the books of an applicant or registrant for the applicant or registrant itself (*i.e.*, the firm's house account), or for general partners of the applicant or registrant. Accounts for those persons included in the proprietary account definition in § 1.3(y) but not included in the more restrictive proprietary account definition of § 1.17 are deemed to be "noncustomer" accounts for purposes of § 1.17. *See* § 1.17(b) (2), (3) and (4). Another definition applicable only to § 1.17, the definition of the term "cover," may be found in § 1.17(j).

An introducing broker's net capital would be determined by computing the amount by which its current assets exceed its liabilities. Current assets means cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold during the next twelve months. Specific items which would be included or excluded from current assets are set forth in § 1.17(c)(2).[71] The conditions for determining whether a receivable is secured, which can affect the calculation of current assets,[72] are set forth in § 1.17(c)(3). Those paragraphs are not being amended.

Liabilities would be determined in accordance with the provisions of § 1.17(c)(4). The Commission is proposing two amendments to the liabilities provisions. The first proposed amendment would restrict to FCMs only the applicability of the provision which excluded from liabilities those funds which are properly segregated and due to customers or option customers, if such funds have been excluded from current assets, since introducing brokers will not accept any customer segregated funds. *See* proposed § 1.17(c)(4)(ii). The other proposed amendment would affect an introducing broker who is a sole proprietor. Such an introducing broker would have to include in its liabilities the excess of any liabilities which have not been incurred in the course of business as an introducing broker over assets not used in the course of business as an introducing broker. A similar provision is currently applicable to FCMs which are organized as sole proprietorships, of which there are very few. *See* proposed § 1.17(c)(4)(iii). The other specific provisions of § 1.17(c)(4), which related to subordinated debt, certain tax liabilities, can certain long-term liabilities, are not being amended. An introducing broker would have to consider whether those provisions are

[69] Section 1.17 may be found at 17 CFR 1.17 (1982), *as amended by* 47 FR 22352 (May 24, 1982) *and* 47 FR 41513 (September 21, 1982) *and* 47 FR 56996 (December 22, 1982).

[70] Similarly, the SEC's financial rules generally defer to those of the Commission with respect to the treatment of commodity-related items. *See* 17 CFR 240.15c3-1b (1982). The Commission and the SEC have undertaken cooperative efforts intended to eliminate, the the extend practicable, duplicate or under regulatory burdens on FCM/broker-dealers and the Commission expects to continue those efforts with regard to firms which are introducing brokers and securities brokers or dealers.

[71] For example, inventories generally would be excluded from current assets. However, spot commodities or securities which adequately collateralize indebtedness may be included in current assets. *See* § 1.17(c)(2)(iv)(A) and (B). Indebtedness would be considered adequately collateralized for those purposes when, pursuant to a legally enforceable written instrument, such indebtedness is secured by identified assets that are otherwise unencumbered and the market value of such assets exceeds the amount of such indebtedness. *See* § 1.17(c)(7).

[72] Except for certain specified types of items, all unsecured receivables, advances and loans would have to be excluded from current assets. *See* § 1.17(c)(2)(ii).

relevant to its particular operations and activities when it computes net capital.

The Commission wishes to note one other point with respect to an introducing broker's liabilities. The Commission assumes that introducing brokers will enter into agreements with clearing FCMs relating to the respective responsibilities of the introducing broker and the FCM for accounts introduced to the FCM by the introducing broker. The Commission further assumes that such agreements will contain an indemnity clause, whereby the introducing broker will agree to indemnify the FCM under specified circumstances, including the failure of any customer promptly to pay any amount due to the FCM. The Commission believes that such a contingent liability of the introducing broker, as well as any other contingent liabilities of the introducing broker, should be reflected in a footnote to the introducing broker's financial statements, but that while such liabilities remain contingent, they need not affect directly the introducing broker's computation of net capital. However, if a contingent liability appears likely to become an actual liability, the introducing broker would have to estimate the amount of actual liability and record that amount on its books.[73] The Commission specifically requests comment on the likelihood of such indemnification agreements between an introducing broker and an FCM, and on the appropriate accounting treatment for contingent liabilities of the introducing broker or the FCM contained in such agreeements.

C. Adjustments to Net Capital.

When an introducing broker has computed its net capital, it would then have to follow the provisions of § 1.17(c)(5) to ascertain what adjustments, if any, would have to be made to its net capital to determine the firm's adjusted net capital. These adjustments, variously referred to as "safety factor charges" or "haircuts," are percentage deductions in the valuation of various assets which would have to be made in order to reflect the possibility of a decline in the value of such assets prior to their disposition.

The Commission is proposing two amendments to the safety factor charges. The first proposed amendment relates to the recently-adopted safety factor charge for FCMs which requires FCMs to adjust their net capital by an amount equal to "four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market."[74] That safety factor charge for FCMs was added in conjunction with an amendment to the minimum adjusted net capital requirement for FCMs. That amendment to the minimum adjusted net capital requirement for FCMs permits an FCM to exclude the market value of exchange-traded commodity options purchased by the FCM's option customers when it calculates the required minimum amount of adjusted net capital based on segregated funds requirements.[75] The safety factor charge for short option customer positions is related to the proper segregation treatment for exchange-traded option transactions.[76] Since an introducing broker will not accept customer segregated funds and since an introducing broker's minimum adjusted net capital requirement will not be based on segregated funds requirements, the Commission is proposing not to apply to introducing brokers the safety factor charge referred to in this paragraph, but to limit the applicability of that charge to FCMs only.

The second proposed amendment to the safety factor charges is also related to segregation of customer funds. Section 4d(2) of the Act[77] permits an FCM, in accordance with rules set forth by the Commission, to invest customer funds "in obligations of the United States, in general obligations of any State or any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States." If an FCM makes any of those permissible investments using customer funds, § 1.17(c)(5)(v) requires the haircuts specified in that paragraph to be applied to those investments. Since an introducing broker will not accept customer segregated funds and cannot therefore make any permissible investments using customer funds, the Commission is proposing not to apply to introducing brokers the safety factor charge for investment of customer segregated funds. The introducing brokers should be aware, however, that the Commission is not proposing to amend the first clause of § 1.17(c)(5)(v), which refers to "secutiries and obligations used by the applicant or registrant in computing net capital." Therefore, if an introducing broker uses its own funds to purchase securities, including securities purchased under an agreement to resell, the haircuts specified in § 1.17(c)(5)(v)[78] would have to be applied to such securities, as well as to securities owned by partners of an introducing broker if the introducing broker is organized as a partnership, to determine adjusted net capital.

The Commission's proposals place no restrictions on an introducing broker with respect to trading for its own account, carrying and clearing the accounts of noncustomers, or soliciting or accepting orders and funds from customers for purposes of trading in non-regulated commodities. the Commission is, however, concerned that if an introducing broker were to engage in some or all of those activities, a "back office" operation would have to be established, and that this could have an adverse impact on what should be the introducing broker's primary function. It would also require back office as well as front office audits of introducing brokers. The Commission is also concerned that the introducing broker could have a much greater financial exposure if it chooses to engage in some or all of the activities referred to earlier in this paragraph. The Commission also notes that the SEC is more restrictive on these matters with securities introducing brokers.[79] For all of these reasons, the Commission, as noted elsewhere in this release, is specifically requesting comment on whether the permissible activities of introducing brokers should be further restricted.

Since the Commission's proposals place no restrictions on an introducing broker with respect to trading for its own account, carrying and clearing the accounts of noncustomers, or soliciting or accepting orders and funds from customers for purposes of trading in non-regulated commodities, the Commission is not proposing to amend

[73] The Commission recognizes that while an indemnification agreement as described above could have a potential adverse impact on an introducing broker's net capital, conversely there could be a potential positive impact on an FCM's net capital. FCMs should be aware, however, that any such agreements will not affect the exclusion of debit/deficit accounts from current assets, nor will they affect the safety factor charges required to be taken for undermargined accounts, although an indemnification agreement may serve to reduce some or all of the impact of such charges on the FCM's adjusted net capital.

[74] FR 41513, 41517 (September 21, 1982). This provision will appear in the next edution of the Code of Federal Regulations at 17 CFR 1.17(c)(5)(iii).

[75] FR 41513, 41516–17 (Septemberr 21, 1982). This provision will appear in the next edition of the Code of Federal Regulations at 17 CFR 1.17(a)(1)(ii).

[76] *See* Division of Trading and Markets, "Financial and Segregation Interpretation No. 8—Proper Accounting, Segregation and Net Capital Treatment of Exchange-Traded Option Transactions" (August 12, 1982), 1 Comm. Fut. L. Rep. (CCH) § 7118.

[77] U.S.C. 6d(2) *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97–444, section 207, 96 Stat. 2302 (1983).

[78] Those haircuts incorporate by reference the securities haircuts established by the SEC. *See* 17 CFR 240.15c3–1(c)(2)(vi) and (c)(2)(vii), as well as 17 CFR 240.15c3–1(f) (1982).

[79] *See* 17 CFR 240.15c3–1(a)(2) (1982).

the provisions providing for safety factor charges for undermargined accounts. Therefore, introducing brokers would have to take safety factor charges for undermargined commodity futures and commodity option accounts of noncustomers, if the introducing broker acts as the clearing firm for such accounts. *See* § 1.17(c)(5)(ix). In addition, in the unlikely event that an introducing broker accepts funds (or extends credit in lieu thereof) from customers trading in non-regulated commodities (*e.g.*, contracts traded on the Winnipeg Commodity Exchange), an introducing broker would have to take safety factor charges for undermargined commodity futures and commodity option accounts of customers, and for undermargined omnibus accounts trading in non-regulated commodities. *See* § 1.17(c)(5)(viii) and (ix).

The other safety factor charges contained in § 1.17(c)(5), which related to advances paid on cash commodity contracts, inventory, fixed price commitments, forward contracts, securities options, proprietary account positions in commodity futures and commodity options, contractual commitments [80] and certain unsecured receivables, are not being amended. An introducing broker would have to apply those charges to its net capital, if such charges are relevant to assets used by the introducing broker in computing its net capital, to determine its adjusted net capital. In addition, if an introducing broker is also a securities broker or dealer, it would have to apply any other haircuts specified in the SEC's net capital rule. *See* 17 CFR 1.17(c)(5)(xiv).

D. Other Provisions Relating to Adjusted Net Capital

The only other proposed amendments to § 1.17 are those necessitated by the inclusion of a minimum adjusted net capital requirement for introducing brokers in proposed § 1.17(a)(1)(ii). That proposed addition would require conforming changes in § 1.17(e)(1) regarding the withdrawal of equity capital, and in paragraphs (h)(2)(vi)(C), (h)(2)(vii)(A), (h)(2(vii)(B), (h)(2)(viii)(A), (h)(3)(ii) and (h)(3)(v) of § 1.17, relating to subordinated debt. There are, however, several other provisions in § 1.17 which the Commission is not proposing to amend and which the Commission intends to apply to introducing brokers in the same manner as they currently apply to FCMs. A brief description of those provisions is set forth below for the convenience of introducing brokers who wish to familiarize themselves with how the capital rules would apply to them.

Section 1.17(d) sets forth the "debt-equity" requirement. This requirement means that thirty percent of a firm's required adjusted net capital would have to consist of equity capital. If an introducing broker's required adjusted net capital is $25,000, $7,500 would have to consist of equity capital. Therefore, if an introducing broker maintained adjusted net capital of $37,500 so that it was not under the early warning system, [81] it could have $30,000 of outstanding debt governed to satisfactory subordination agreements (*see* proposed § 1.17(h), discussed *infra*) and $7,500 of equity capital. No matter how much adjusted net capital is maintained by the introducing broker, the thirty percent equity requirement would apply only to the amount of required adjusted net capital.

What constitutes equity capital is set forth in § 1.17(d). Certain subordinated debt may qualify as equity capital if specified conditions are met, in addition to those which apply to subordinated debt in general. These additional conditions are: (1) The lender must be a partner or stockholder of the firm; (2) the initial term of the debt must be at least three years, and there must be a remaining term of not less than twelve months; [82] (3) the governing subordination agreement does not contain most of the otherwise permissible provisions relating to accelerated maturity; (4) the governing subordination agreement allows no special prepayment of the debt (*i.e.*, prepayment before one year from the date such subordination agreement becomes effective); and (5) the debt in question is maintained as equity capital subject to the provisions on withdrawal of equity capital contained in § 1.17(e). If a firm is organized as a partnership, however, additional conditions (3) and (4) need not be met for subordinated debt to quality as equity capital, if "the partnership agreement provides that capital contributed pursuant to a satsifactory subordination agreement as defined in [§ 1.17(h)] shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by [§ 1.17(e)]." [83]

In addition to certain subordinated debt, equity capital includes the following:

(i) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts.

(ii) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodities, options and securities accounts subject to the provisions of [§ 1.17(e)]), and unrealized profit and loss.

(iii) In the case of a sole proprietorship, the sum of its capital accounts of the sole proprietorship and unrealized profit and loss. [84]

Section 1.17(e) governs withdrawal of equity capital. If the proposed mimimum adjusted net capital requirement of $25,000 is adopted for introducing brokers, no withdrawals of equity capital could be made if that would leave the introducing broker with less than the greater of $30,000 (120 percent of the applicable minimum dollar requirement of $25,000) or, if the introducing broker is also registered with the SEC as a securities broker or dealer, the amount specified in the SEC's comparable provision limiting withdrawal of equity capital. [85] Also, a withdrawl of equity capital could not be made if it would cause an introducing broker to violate the thirty percent equity capital requirement set forth in § 1.17(d).

Section 1.17(f) governs the consolidation of assets and liabilities of a subsidiary or affiliate for purposes of computing net capital. Such a consolidation would be *required* to be made with any subsidiary or affiliate for which an introducing broker guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities. Such a consolidation would be permitted, but would not be required, if a subsidiary or affiliate is (1) majority owned and controlled by the introducing broker, and (2) the introducing broker can demonstrate, by an opinion of

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[80] Section 1.17(c)(8) defines contractual commitments as follows:

The term 'contractual commitments' shall include underwriting, when issued, when distributed, and delayed delivery contracts; and the writing or endorsement of security puts and calls and combinations thereof; but shall not include uncleared regular way purchases and sales of securities. A series of contracts of purchase or sale of the same security, conditioned, if at all, only upon issuance, may be treated as an individual commitment.

The safety factor charge for contractual commitments will be relevant only to an introducing broker which is also a securities broker or dealer.

[81] The proposed early warning level is 150 percent of the required minimum dollar amount or, if the introducing broker is registered with the SEC as a securities broker or dealer, and higher amount set by the SEC. *See* proposed § 1.12(b)(2).

[82] Subordinated debt entered into today with a maturity date of July 1, 1986 could, therefore, qualify as equity capital if all other requirements were met. On July 1, 1985, however, such subordinated debt would no longer be counted as equity capital unless an extension of the maturity date had been agreed to by the parties, since the remaining term of the debt would be less than one year at that time.

[83] 17 CFR 1.17(d)(1) (1982), *as amended by* 47 FR 22352, 22355 (May 24, 1982).

[84] 17 CFR 1.17(d)(1)(i), (ii) and (iii) (1982).

[85] 17 CFR 240.15c3-1(e) (1982).

counsel, that the net asset values, or the portion related to the introducing broker's interest in the subsidiary or affiliate, may be caused by the introducing broker, or an appointed trustee, to be distributed to the introducing broker within 30 calendar days. The particular requirements relating to the opinion of counsel and the preparation of a consolidated computation of adjusted net capital are set forth in paragraphs (f)(2)(ii), (f)(3) and (f)(4) of § 1.17.

Section 1.17(h) sets forth the minimum and nonexclusive requirements for a satisfactory subordinate agreement. Unless debt is governed by a satisfactory subordination agreement, such debt may not be excluded from liabilities for purposes of computing net capital.

There are two types of subordination agreement. One type is a subordinated loan agreement, which governs a subordinated borrowing of cash. The other type is a secured demand note agreement, which governs the contribution of a secured demand note and the pledge of securities and/or cash as collateral to secure payment of the secured demand note by a lender.

The general requirements for a satisfactory subordinated loan agreement (cash only) include: (1) A minimum term of one year; (2) that it be enforceable in accordance with the terms of the agreement against both parties and their respective heirs, executors, administrators, successors and assigns; (3) that it govern subordinated debt of a specific dollar amount; (4) a provision that the cash proceeds thereof shall be used and dealt with by the borrower as part of its capital and shall be subject to the risks of the business; (5) a provision giving the borrower the right to deposit any cash proceeds in an account or accounts in its own name in any bank or trust company; (6) a prohibition on cancellation by either part; (7) a provision prohibiting payment under the agreement, or the termination, rescission or modification of the agreement, if those actions would have an effect; inconsistent with § 1.17(h); [86] and (8) a clause which effectively subordinates any right of the lender to receive any payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the applicant or registrant arising out of any matter occurring prior to the date on which the related payment obligation matures, except for claims which are the subject of subordination agreements which rank on the same priority as, or junior to, the claim of the lender such subordination agreement. [87]

A secured demand note agreement must include items (1), (2), (3), (6), (7) and (8) from the preceding paragraph as well as: (1) A provision giving the borrower the right to deposit any cash pledged as collateral in an account or accounts in its own name in any bank or trust company; (2) a provision giving the borrower the right to pledge, repledge, hypothecate and rehypothecate any or all of the securities pledged as collateral, without notice, separately or in common with other securities or property for the purpose of securing any indebtedness of the borrower; (3) a provision giving the borrower the right to lend to itself or others any or all of the securities and cash pledged as collateral; and (4) a provision requiring that, if the secured demand note becomes undercollateralized, either the lender must restore sufficient collateral, the borrower must commence sale of the collateral for the lender's account, or the lender must reduce the unpaid principal amount of the secured demand note, subject to the approval of the borrower and the appropriate regulatory authority.

Collateral for a secured demand note may consist only of (1) cash, and (2) securities which are fully paid for and which may be publicly offered or sold without registration under the Securities Act of 1933 and which are not otherwise restricted regarding offer, sale and transfer. Such securities must also be in bearer form or registered in the name of the borrower or the borrower's nominee or custodian. *See* § 1.17(h)(2)(vi) and (h)(3)(iv). The collateral value of such securities is their market value after applying the percentage deductions contained in § 1.17(c)(5), which are described above. *See § 1.17(h)(1)(iii). Subject to the borrower's prior rights as pledgee, the lender may retain certain rights with repect to the securities used for collateral. See* § 1.17(h)(1)(v)(C) and (D).

If a secured demand note is not paid upon presentment and demand, the borrower has the right to liquidate all or any part of the securities then pledged as collateral and the right to apply the net proceeds of such a liquidation, together with any cash then included in the collateral, in payment of the secured demand note. The secured demand note agreement may provide that neither the lender, nor the lender's heirs, executors, administrators or assigns, shall be personally liable on the secured demand note, and that in the event of default, the borrower may obtain payment of the note solely from the collateral then pleded to secure the note. *See* § 1.17(h)(1)(v)(AA) and (C).

In addition to the provision which must be included in subordination agreements, such agreements may also contain provisions for prepayment and/or special prepayment under certain conditions (*see* § 1.17(h)(2)(vii)) and provisions for accelerated maturity under certain conditions *see* § 1.17(h)(2)(ix) and (x)). Accelerated maturity of the borrower's payment obligation under a subordination agreement is required in the event of any receivership, insolvency, liquidation, bankruptcy, assignment for the benefit of creditors, reorganization, or any other marshalling of the borrower's assets and liabilities. Even in such an event, however, the lender's right to receive payment remains subordinate as set forth in § 1.17(h)(2)(iii). *See* § 1.17(h)(2)(ix)(B).

In addition to the normal type of subordination agreement described above, there are two other types of subordination agreements, a temporary subordination agreement and a nonconforming subordination agreement. A firm may be permitted to enter into a temporary subordination agreement so that it can participate as an underwriter of securities or undertake other extraordinary activities and still remain in complaince with the minimum adjusted net capital requirement. Special conditions applicable to a temporary subordination agreement are set forth in proposed § 1.17(h)(3)(v).

A nonconforming subordination agreement is an agreement governing subordinated debt which is borrowed by a firm when the firm becomes undercapitalized, and such borrowing is permitted in order to assist the firm in achieving compliance with applicable capital requirements. Special conditions applicable to such debt are set forth in § 1.17(h)(4).

Requirements for filing subordination agreements are set forth in § 1.17(h)(3)(iv). Two signed copies of any proposed subordination agreement (including nonconforming subordination agreements) must be submitted to the Commission's Division of Trading and Markets in Washington, D.C., to the attention of the Chief Accountant, at least ten days prior to the proposed effective date of the agreement or at such other time as the Chief Accountant may, for good cause, accept such filing.

[86] Repayment of subordinated debt must be suspended if such repayment would cause the borrower's capital to fall below certain specified levels. *See* proposed § 1.17(h)(2)(viii)(A).

[87] 17 CFR 1.17(h)(2)(iii)(1982).

If the borrower is a member of a designated self-regulatory organization ("DSRO"), copies of any proposed agreement must be filed in such quantities and at such time as the DSRO requires. If the borrower is an applicant for registration or is not a member of any DSRO, the Commission will examine the agreement, and it must be approved by the Commission to be considered a satisfactory subordination agreement for net capital purposes. If the borrower is a DSRO member, the DSRO must examine the agreement, and only approval by the DSRO is necessary (although two copies must still be submitted to the Commission). If the borrower is a DSRO member, the Commission will only be involved directly under certain conditions, such as in the case of a request for prepayment, which requires approval by both the DSRO and the Commission.

Several commodity exchanges and other entities have developed subordination agreement forms that are generally acceptable under the Commission's regulations, and those interested in applying for registration as an introducing broker may want to obtain a copy of such forms and begin to become familiar with such forms.

E. Financial Reporting Requirements

Section 1.10 of the regulations contains most of the requirements relating to the filing and contents of financial reports for FCMs. The Commission is proposing to amend §1.10 to include such requirements for introducing brokers, which will be very similar to those for FCMs.

Under the proposed amendments, an initial application for registration as an introducing broker would have to be accompanied by a financial report, and the introducing broker applicant would have the choice of two options to meet that requirement. The firm could either file a current form 1-FR (*i.e.*, a form 1-FR dated as of a date not more than 45 days prior to the date on which the registration application is filed) certified by an independent public accountant,[88] or the firm could file a current uncertified form 1-FR together with a form 1-FR certified by an independent public accountant as of a date not more than one year prior to the date of filing. In addition, each introducing broker applicant, as is the case with FCM applicants, would be required to submit with its financial report a statement which describes the source of its current assets and which represents that its capital has been contributed for the purpose of operating the business and will continue to be used for that purpose. *See* proposed § 1.10(a)(2).

An exception to the requirement to file a certified financial report with an application for registration as an introducing broker would be made for an introducing broker applicant which is succeeding to and continuing the business of another introducing broker. (A similar exception presently exists for an FCM applicant which is succeeding to and continuing the business of another FCM.) Such an applicant would not need to file any financial report with its application, but would need to file an uncertified form 1-FR as of the first monthend following the date on which registration is granted. Thereafter, such a firm would file financial reports like any other introducing broker. *See* proposed §1.10(a)(3).

The requirements for filing financial reports after a firm is granted registration as an introducing broker are set forth in proposed § 1.10(b). Each introducing broker would have to file a quarterly form 1-FR, and the report which is filed as of the firm's fiscal year-end date would have to be certified by an independent public accountant in acordance with § 1.16. If the introducing broker elects a fiscal year which does not coincide with the calendar year (*see* proposed § 1.10(e)), the introducing broker would nevertheless be allowed to file a quarterly uncertified form 1-FR as of each calender quarter. However, the year-end certified form 1-FR would have to be filed as of the close of the introducing broker's fiscal year. Uncertified reports would have to be filed within forty-five days after the end of the quarter for which the report is being filed; the certified report would have to be filed within ninety days after the end of the fiscal year. Therefore, an introducing broker with a calendar year fiscal year would have to file its year-end certified report by March 31, and the first quarter report would be due on May 15. *See* proposed § 1.10(b)(1) and 17 CFR 1.10(b)(2) (1982).

The Commission has been advised that the bylaws of the National Futures Association ("NFA"), which at present is the only registered futures association, will be amended to provide for the membership category of introducing broker and effectively to require all introducing brokers to become NFA members. The NFA is a designated self-regulatory organization ("DSRO") under the Commission's regulations. *See* 17 CFR 1.3(ee) (1982) and proposed § 1.3(ff). Proposed § 1.10(b)(3) would provide that if an introducing broker is a member of a DSRO which has minimum financial and related reporting requirements which have been approved by the Commission pursuant to Section 4f(2) of the Act and § 1.52 of the regulations, the introducing broker can satisfy its financial report filing requirement by filing its report with the DSRO and promptly providing the Commission with a copy of the report.[89] The rules of a DSRO may provide for the filing of a year-end certified financial report and a semiannual uncertified interim report, rather than quarterly filing. *See* proposed § 1.52(a).

The Commission is not proposing to amend § 1.10(b)(4), but it intends to extend the coverage of that provision to introducing brokers as well as FCMs. It would require an introducing broker to furnish more frequent reports on form 1-FR, or to supply additional information, upon the written request of the Commission or a self-regulatory organization of which the introducing broker is a member (*e.g.*, the NFA). This would enable the Commission or the self-regulatory organization to obtain more timely information than is supplied by the quarterly financial report. The Commission typically makes such requests with respect to FCMs when a firm is thought to be in a questionable financial condition and expects to apply the rules similarly to introducing brokers.

Form 1-FR is the standard financial reporting form for FCMs, and the Commission is proposing to have introducing brokers use form 1-FR for their financial reporting as well. *See* proposed § 1.10(d). The Commission believes that form 1-FR is familiar to the industry and that using the existing form will make completion of the form by the industry, and its review by the Commission and DSROs, easier than would be the case if a separate form for introducing brokers were developed. The Commission is proposing that introducing brokers also use form 1-FR because a separate form for introducing brokers would necessarily be very similar to, and largely duplicative of, form 1-FR. The Commission believes that having introducing brokers and FCMs both use form 1-FR will result in more efficient compliance with and

[88] The requirements relating to accountant certification are contained in proposed § 1.16, discussed *infra*.

[89] Any financial report or copy thereof which an introducing broker would be required to file with the Commission (exclusive of financial reports submitted with the initial registration application, which would have to be submitted with the firm's application for registration and filed with the Commission's Chicago regional office) would have to be filed with the regional office of the Commission nearest the principal place of business of the introducing broker. *See* 17 CFR 1.10(c) (1982).

administration of financial reporting requirements, but the Commission specifically requests comment as to whether a separate financial reporting form for introducing brokers should be developed.

The form 1-FR would be left essentially unchanged, since much of the same information regarding the financial condition of an FCM will also be required to be furnished by an introducing broker. The instructions to the form would be modified, however, to make it clear that certain items do not apply to introducing brokers, which would include most of those items relating to commodity customer funds and commodity customer accounts. For instance, introducing brokers would not be required to complete the schedule of segregation requirements and funds on deposit in segregation, since introducing brokers would obviously have none. Introducing brokers should complete form 1-FR in accordance with the instructions to the form.[90]

Every certified form 1-FR filed by an introducing broker would be required to contain the following items: (1) A statement of financial condition; (2) statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors; (3) a statement of computation of minimum capital requirements; (4) appropriate footnote disclosures; and (5) such further material information as may be necessary to make the required statements not misleading.[91] For the interim uncertified reports, an introducing broker would be required to file the statement of financial condition, the statement of changes in ownership equity, the minimum capital computation, and such further material information as may be necessary to make the required statements not misleading.

Introducing brokers should also be aware that § 1.10(d)(4), which is not being amended, would also apply to them. Section 1.10(d)(4) states that:

> Attached to each form 1-FR filed pursuant to this § 1.10 must be an oath or affirmation that, to the best knowledge and belief of the individual making such oath or affirmation, the information contained in the form 1-FR is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer.

F. Fiscal Year Elections

Section 1.10(e) relates to a firm's fiscal year. Proposed § 1.10(e)(1) provides that each introducing broker or applicant therefor may establish a fiscal year other than the calendar year. Proposed § 1.10(e)(2) provides that each introducing broker or applicant therefor may elect to file its financial reports as of each calendar quarter in lieu of each fiscal quarter, if the firm's fiscal year is other than the calendar year. Each introducing broker or applicant therefor would be able to establish a fiscal year other than the calendar year by notifying the Commission and all self-regulatory organizations of which it is a member, if any, of its election of such fiscal year. Similarly, each introducing broker may elect to file its financial reports as of each calendar quarter in lieu of each fiscal quarter by similar notification of its intent. Such notification would have to be made in writing concurrently with the filing of a form 1-FR submitted with the registration application. An introducing broker would not be able to change such elections unless it made written application to, and received approval from, the Commission.

G. Extension of Time To File Financial Reports

Another provision which would apply to introducing brokers, but which is not being amended, is § 1.10(f) (17 CFR 1.10(f) (1982)). That paragraph governs requests for extension of time to file unaudited financial reports.[92] In the event that an introducing broker found that it could not file an unaudited financial report within the time limits set forth in the regulations without substantial undue hardship, the introducing broker could apply for an extension of time to a specified date not more than 90 days beyond the required filing date. Using the example referred to earlier of an introducing broker with a calendar year fiscal year, the first quarter unaudited report would be due on May 15, which is 45 days after the end of the first quarter. A request for an extension of time for filing such a report would have to contain an agreement to file the report on or before a specified date, which could be no later than August 13, since that is 90 days after May 15. An application for an extension of time would have to state the reasons why the requested extension is necessary, and it would have to be *received* by the principal office of the Commission in Washington, D.C. (the request should be sent to the attention of the Chief Accountant of the Division of Trading and Markets) prior to the report due date, which would be May 15 for the first quarter report. Notice of the extension request would have to be given to the introducing broker's DSRO concurrently with the filing of the request with the Commission. Introducing brokers should be aware of the fact that merely filing a request for an extension of time would not operate as an automatic extension of the time for submitting a financial report.

The Commission shall, within 10 calendar days after receipt of the extension of time request, either notify the introducing broker that the request has been granted or denied, or indicate to the introducing broker that the Commission needs a specified amount of additional time to review the request. The Commission will notify any DSRO of which the introducing broker is a member of the action taken with respect to the extension request. The Commission anticipates that, as has been the experience with FCMs, extensions will be granted only in those rare cases where an introducing broker can demonstrate that substantial undue hardship will be incurred if the extension is not granted.

H. Nonpublic Treatment of Financial Reports

Section 1.10(g) concerns the treatment of financial reports for purposes of the Freedom of Information Act [93] and the Government in the Sunshine Act [94] and

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[90] The changes to the form 1-FR which would be necessitated by the proposed amendments to the regulations discussed herein are not being published in this release because those changes are of a minor, technical nature and because form 1-FR does not appear in the Code of Federal Regulations. Anyone interested in further information regarding the changes to form 1-FR may contact Mr. Patent at the address or telephone number listed in this release. Form 1-FR is available upon request from the Commission.

[91] The statement of financial condition and the statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors included in the certified financial reports would not need to be filed in accordance with the format set forth in form 1-FR if the independent public accountant determines that such format would be inconsistent with generally accepted accounting principles for the financial statements of the applicant or registrant. If such a determination were made, the statement of financial condition would have to be presented in a format which is as consistent as possible with form 1-FR, and a reconciliation would have to be provided which reconciles the statement of financial condition to the statement of computation of minimum capital requirements.

[92] Section 1.10(f) governs extensions of time for reports filed in accordance with § 1.10(b)(1) (the normal periodic interim reports), § 1.10(b)(4) (a report filed pursuant to a written request from the Commission or a DSRO), or § 1.12(b) (reports required by the financial early warning system, discussed *infra*). Requests for extension of time to file a certified financial report are governed separately by § 1.16(f), discussed *infra*.

[93] 5 U.S.C. 552.

[94] 5 U.S.C. 552b.

the Commission's regulations promulgated in accordance with those Acts, Parts 145 and 147, respectively. The proposed treatment of a form 1–FR filed by an introducing broker under those Acts and regulations will essentially be the same as it is for an FCM. The introducing broker's statement of financial condition and minimum capital computation, as well as the independent accountant's opinion included with a certified form 1–FR, would be treated as public information. If those portions of the financial report are bound separately by the introducing broker from the remainder of the report (*i.e.*, on certified reports, the income statement, the statement of changes in financial position, the statement of changes in subordinated liabilities, footnote disclosures, and the accountant's report on material inadequacies, and, on all financial reports, the statement of changes in owership equity) the items referred to in parentheses would be treated as nonpublic records. Introducing brokers are advised that the nonpublic treatment of certain portions of the financial report is a waivable option. If the introducing broker does not follow the separate binding procedure, all of the financial report may be treated as a public record by the Commission.[95]

I. Filing Option for Firms Registered With the SEC

Another option which will be available to introducing brokers is contained in proposed § 1.10(h). If the introducing broker is also registered with the SEC as a broker or dealer, it would be able to elect to file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 ("FOCUS Report") in lieu of form 1–FR. If the introducing broker is a securities clearing broker-dealer, it would file a copy of the FOCUS Report, Part II; if the introducing broker is a securities introducing broker, it would file a copy of the FOCUS Report, Part IIA.[96] The filing option would be permitted on the condition that all of the information which is required to be furnished on and submitted with form 1–FR is provided in the FOCUS Report. Section 1.10(h) includes this proviso to take into account the possibility that the SEC might fail to amend its financial reporting requirements if the Commission in the future requires additional information to be furnished on or submitted with form 1–FR. At present, an introducing broker would be able to use the FUCUS Report, Part II or Part IIA, in lieu of form 1–FR.[97]

J. Outdated References

The Commission also wishes to note that it is eliminating certain outdated references in paragraphs (b)(1), (d)(1)(ii), (d)(2)(ii), (e)(1) and (e)(2) of § 1.10. Such references, which refer to such things as the time for filing certain financial reports or the time within which to make certain elections, no longer have any relevance to FCMs, and separate references for introducing brokers would be unnecessarily confusing and would also shortly become outdated. However, the Commission expects to treat introducing brokers in a manner similar to the treatment accorded FCMs following the effective date of the amendments to the minimum financial and related reporting requirements adopted in 1978. For example, an introducing broker's election of a fiscal year other than the calendar year, and an introducing broker's election to file interim reports based on the calendar year rather than the fiscal year, could always be made concurrently with the introducing broker's registration application. For the 90-day period following the effective date of the amendments to § 1.10(e), the Commission also intends to allow introducing brokers to make such elections even after the filing of their registration application. *See* 17 CFR 1.10(e) (1982).

K. Certification of Financial Reports and the Role of Independent Public Accountants

Under proposed § 1.10(a)(2), an applicant for registration as an introducing broker would have to submit a certified financial report with its application. Under proposed § 1.10(b)(1), a registered introducing broker would have to file a certified financial report as of its fiscal year-end date. *See also* § 1.10(b)(2). The certification of those financial reports would have to be made by a certified public accountant or a licensed public accountant in accordance with § 1.16.

Section 1.16 contains the provisions which relate to accountants and their role in the preparation of certified financial reports. Persons planning to file an application for registration as an introducing broker should become familiar with those provisions, and they should have their accountants become familiar with § 1.16 as well. The Commission, because of the proposal of regulations to govern introducing brokers, is also proposing two minor technical amendments to § 1.16 which are described below, but the substance of that section would remain basically unchanged.

The first proposed amendment would merely conform § 1.16(c)(5) to the proposed amendment to the broker-dealer filing option contained in proposed § 1.10(h), and would allow an FCM or an introducing broker which is also registered as a securities broker or dealer with the SEC to file a copy of either Part II or Part IIA of the FOCUS Report in lieu of form 1–FR. The second proposed amendment would restrict the requirements for auditing funds in segregation and segregation requirements to audits of FCMs only, since only FCMs will be able to hold customer segregated funds. *See* proposed paragraphs (d) and (f)(1) of § 1.16.

As stated above, the substance of § 1.16 would remain basically unchanged. Definitions for purposes of § 1.16 are contained in paragraph (a). Paragraph (b) sets forth the requirements for an accountant who certifies a firm's financial statements, both with respect to professional standing and in terms of independence from the firm being audited. Paragraph (c) sets forth the items which would have to be contained in the accountant's report, which include such things as the accountant's manual signature, the accountant's representation and opinion on certain matters, and an identification of any matters in the firm's financial statements to which the accountant takes exception. The procedures which would have to be followed in the event of the replacement of the accountant are set forth in paragraph (g).

The required objectives of the audit by the independent accountant are set forth in proposed § 1.16(d). The audit

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[95] An introducing broker would, of course, be free to petition the Commission for confidential treatment of all or any portion of any financial report, or any other material submitted to the Commission, in accordance with and subject to the conditions of § 145.9 of the Commission's regulations (17 CFR 145.9 (1982)). However, the separate binding procedure set forth in § 1.10(g) is intended to eliminate the need for such a petition in connection with a financial report.

[96] The Commission is aware that some FCMs who are securities introducing brokers are filing a copy of the FOCUS Report, Part IIA, in lieu of form 1–FR. Section 1.10(h) is being clarified to allow any FCM or introducing broker to file Part II or Part IIA of the FOCUS Report, as appropriate.

[97] In connection with the proposed expansion of the filing option to allow the filing of Part IIA of the FOCUS Report, the Commission is also proposing to add § 145.5(d)(1)(i)(D) and § 147.3(b)(4)(i)(A)(*4*) of the regulations under the Freedom of Information Act and Government in the Sunshine Act, respectively. Those new paragraphs would provide for nonpublic treatment of the FOCUS Report, Part IIA, to the same extent as presently provided for the FOCUS Report, Part II. *See* 17 CFR 145.5(d)(1)(i)(C) and 147.3(b)(4)(i)(A)(*3*) (1982).

would have to include all procedures necessary under the circumstances of the particular introducing broker to enable the accountant to express an opinion on the introducing broker's financial statements and schedules. An audit of an introducing broker would also have to include a review of the practices and procedures followed by the introducing broker in making periodic computations of the firm's adjusted net capital requirement and its actual adjusted net capital. The proper extent and timing of audit procedures are matters for the accountant to determine based on the introducing broker's accounting system and internal accounting controls. *See* § 1.16(e)(1).

One of the principal reasons why the Commission is proposing to require auditing of an introducing broker by an independent licensed or certified public accountant is so that a determination can be made by the accountant as to whether any material inadequacies exist in the introducing broker's accounting system, internal accounting controls and procedures for safeguarding the firm's assets. Under proposed § 1.16(d)(2), such a material inadequacy includes any conditions which contributed substantially to, or if appropriate corrective action is not taken, could reasonably be expected to:

(i) Inhibit an applicant or registrant from promptly completing transactions or promptly discharging his responsibilities to customers or other creditors;

(ii) Result in material financial loss;

(iii) Result in material misstatement of the applicant's or registrant's financial statements and schedules; or

(iv) Result in violations of the Commission's * * * recordkeeping or financial reporting requirements to the extent that could reasonably be expected to result in the conditions described in paragraphs * * * (i), (ii), or (iii) * * *.

Under § 1.16(e)(2), if an accountant discovers a material inadequancy, the accountant would have to call that inadequacy to the attention of the introducing broker. The firm would then be required, as part of the financial early warning system,[98] to inform the Commission and the DSRO, if any, of the fact that the accountant has discovered a material inadequacy. The introducing broker would also have to furnish the accountant with a copy of the introducing broker's notice to the Commission, and if there are statements in that notice with which the accountant disagrees, or if there are items omitted in the notice, or if a copy of the notice is not received by the accountant, the accountant would have to file a report with the Commission and the DSRO, if any regarding those matters.

In addition, under proposed § 1.16(c)(5), whenever an introducing broker or applicant therefor would be required to file a certified financial report, the firm filing their report would have to file concurrently a supplemental report of the independent accountant describing any material inadequacies found to exist as of the date of the audit, or found to have existed since the date of the previous audit. The supplemental accountant's report on material inadequacies would have to indicate any corrective action taken or proposed by the firm with respect to any such material inadequacies. If the audit did not disclose any material inadequacies, the accountant's supplemental report would be required to so state. *See* proposed § 1.16(c)(5).

As stated above in the discussion of requests for extension of time to file unaudited financial reports, requests for extension of time to file certified financial reports are governed separately by proposed § 1.16(f). In the event that an introducing broker found that it could not file its certified financial report within the time limit set forth in the regulations, which is 90 days after the end of the firm's fiscal year (*see* proposed § 1.10(b)(1)), the introducing broker could apply for an extension of time to a specified date not more than 90 days beyond the required filing date. Continuing the example referred to earlier of an introducing broker with a calendar year fiscal year, the certified year-end financial report would be due on March 31, and an extension of time request could specify a date no later than June 29 for filing such a report.

As in the case for a request for extension of time to file an unaudited financial report, an introducing broker's request for extension of time to file a certified financial report would have to: (1) State the reasons why the requested extension is necessary; (2) contain an agreement to file the report on or before a specified date (which, in the example cited in the preceding paragraph, can be no later than June 29); and (3) be *received* by the principal office of the Commission in Washington, D.C. (the request should be sent to the attention of the Chief Accountant of the Division of Trading and Markets) and by the introducing broker's DSRO, if any, prior to the date on which the report is due. In addition, an introducing broker's request for extension of time to file a certified financial report would have to: (1) Indicate that the introducing broker's inability to make a timely filing is due to circumstances beyond the introducing broker's control, if such is the case, and describe briefly the nature of those circumstances; (2) be accompanied by the introducing broker's latest available formal computation of adjusted net capital and minimum financial requirements, computed in accordance with § 1.17; and (3) be accompanied by a letter from the introducing broker's independent public accountant answering the following questions:

A. What specifically are the reasons for the extension request?

B. On the basis of that part of your audit to date, do you have any indication that may cause you to consider commenting on any material inadequacies in the accounting system, internal accounting controls or procedures for safeguarding customer or firm assets?

C. Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in § 1.17, or has any significant financial or recordkeeping problems?

Introducing brokers should be aware of the fact that merely filing a request for an extension of time would not operate as an automatic extension of the time for submitting a financial report. The Commission shall, within 10 calendar days after receipt of the extension request, either notify the introducing broker that the request has been granted or denied, or indicate to the introducing broker that the Commission needs a specified amount of additional time to review the request. The Commission will notify any DSRO of which the introducing broker is a member of the action taken with respect to the extension request. The Commission anticipates that, as has been the experience with FCMs, extensions will be granted only in those rare cases where an introducing broker can demonstrate that substantial undue hardship will be incurred if the extension is not granted.

L. Financial Early Warning System

The Commission's financial early warning system for FCMs is contained in § 1.12. When the Commission first proposed the present financial early warning system it stated:

In short, the system is designed to afford the Commission and the appropriate industry self-regulatory organizations sufficient advance notice of an FCM's problems to allow the necessary protective, as opposed to enforcement, action to be taken to insure the safety of the FCM's customers' funds and the integrity of the marketplace.[99]

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[98] *See* 17 CFR 1.12(d) (1982).

[99] 42 FR 31740 (June 22, 1977).

The Commission is proposing a similar financial early warning system for introducing brokers. The Commission recognizes, however, that there are certain significant differences between the operations of FCMs and introducing brokers, and the Commission is therefore also requesting specific comments on this matter.

The principal element of the financial early warning system, as currently in effect for FCMs, becomes operational when an FCM, or applicant therefor, knows or should have known that its adjusted net capital at any time is less than the greatest of: (1) 150 percent of the required minimum dollar amount; (2) six percent of the customer funds required to be segregated less the market value of exchange-traded commodity options purchased by customers;[100] or (3) if the firm is also a securities broker or dealer, any higher amount required by the SEC's early warning system.[101] The Commission is proposing to add a similar provision for introducing brokers and introducing broker applicants, except that, since introducing brokers will not accept segregated funds, the provision would become operational when an introducing broker, or applicant therefor, knows or should have known that its adjusted net capital at any time is less that the greater of: (1) 150 percent of the required minimum dollar amount, or (2) if the firm is also a securities broker or dealer, any higher amount required by the SEC's early warning system.

An introducing broker which fails to maintain adjusted net capital equal to or in excess of the early warning level would be required to make the same filings as an FCM. The firm would have to file written notice that its adjusted net capital fell below the early warning level within five business days of such event. Further, the firm would have to file a financial report as of the close of business for the month during which its adjusted net capital fell below the early warning level, and as of the close of business for each month thereafter until three successive months have elapsed during which the firm's adjusted net capital is at all times equal to or in excess of the early warning level. Each of those financial reports must be filed within thirty calendar days after the end of the month for which the report is being made. *See* proposed § 1.12(b).

Another important element of the early warning system, which requires an FCM to give telegraphic notice within 24 hours after it knows or should have known that it is undercapitalized, would be applied to introducing brokers as well. *See* proposed §1.12(a). The only difference in the requirements for FCMs and introducing brokers under proposed § 1.12(a) relates to what would have to be filed within 24 hours of the notice of undercapitalization. FCMs must file a statement of financial condition, a capital computation, and a segregation schedule, all as of the date of undercapitalization. Introducing brokers would only have to file a statement of financial condition and capital computation, since they will not accept segregated funds.

Those persons intending to apply for registration as introducing brokers should become familiar with certain other elements of the financial early warning system which are not being amended but which the Commission intends to apply to introducing brokers. If an introducing broker at any time failed to make or keep current the books and records required to be maintained by the regulations promulgated under the Act, the introducing broker would be required, on the same day such event occurs, to give telegraphic notice of such fact, specifying the books and records which have not been prepared or which are not current. In addition, within five business days after giving such notice the introducing broker would have to file a written report stating what steps have been and are being taken to correct the situation. *See* § 1.12(c).

If an introducing broker were to discover or be notified by an independent public accountant of the existence of a material inadequacy in its accounting system, its internal accounting controls, or its procedures for safeguarding customer and firm assets,[102] the introducing broker would have to give telegraphic notice of such material inadequacy within three business days. In addition, within five business days after giving such notice, the introducing broker would have to file a written report stating what steps have been and are being taken to correct the material inadequacy. *See* § 1.12(d).

Those persons intending to apply for registration as introducing brokers, and the NFA, should be aware that § 1.12(e) also requires any self-regulatory organization which learns that a member registrant has failed to file a notice or written report required under the financial early warning system to immediately report such member's failure to do so.

Every notice which an introducing broker would have to file under the financial early warning system would have to be submitted to the principal office of the Commission in Washington, D.C. (to the attention of the Chief Accountant, Division of Trading and Markets), to the Commission's regional office for the region in which the firm has its principal place of business, to the firm's designated self-regulatory organization, if any, and, if the firm is a securities broker or dealer, to the SEC. All follow-up written reports and financial statements would have to be filed with the same entities, except for the principal office of the Commission. *See* § 1.12(g).

As stated above, the Commission is requesting specific comment on the appropriate financial early warning system for introducing brokers. Commentators should consider the following factors. The early warning level based on the required minimum dollar amount of net capital is 120 percent for securities brokers or dealers, whether the firm engages in a general securities business or merely acts as an introducer of customer accounts to a clearing broker.[103] Furthermore, because introducing brokers will not accept customer funds, an introducing broker's adjusted net capital should be subject to far less fluctuation than that of an FCM. Also, if the Commission establishes an early warning level of adjusted net capital for introducing brokers which is higher than the minimum adjusted net capital requirement, introducing brokers would have to either maintain the early warning level of adjusted net capital or file a form 1-FR each month until three successive months have elapsed during which the firm's adjusted net capital is at all times equal to or in excess of the early warning level. Such a monthly filing requirement (as opposed to a quarterly or semiannual filing requirement) could be burdensome, especially for a small firm, and could

[100] The deduction for each option customer is limited to the amount of customer funds in such option customer's account. The early warning level based on segregation requirements can be viewed as being 150 percent of the required minimum adjusted net capital amount based on segregation requirements (6 percent as compared to 4 percent).

[101] 17 CFR 240.17a-11 (1982).

[102] For an explanation of what constitutes a material inadequacy, *see* proposed § 1.16(d)(2), discussed *supra*.

[103] *See* 17 CFR 240.17a-11(b) (1982). The Commission also wishes to point out, however, that the early warning level for a securities broker or dealer using the aggregate indebtedness ("AI") method of computing net capital is 125 percent of the minimum amount, since minimum net capital must be 6⅔ percent of AI and the early warning level is 8⅓ percent of AI. Such a firm which uses the "alternative" method of computing net capital, based on aggregate debit items ("ADI"), has an early warning level which is 250 percent of the required minimum level of net capital since minimum net capital must be 2 percent of ADI and the early warning level is 5 percent of ADI.

divert regulatory resources to firms which do not necessarily require enhanced surveillance from those firms which may require closer scrutiny.

Taking all of those factors into account, the Commission is specifically requesting comment as to whether the financial early warning system for introducing brokers should be essentially the same as it is for FCMs, as the Commission is proposing. One alternative would be to establish the early warning level of adjusted net capital at 120% of the required minimum dollar amount, rather that the proposed 150%, which would be the same as it is for introducing securities brokers or dealers.[104] Another alternative would be to require only notice of undercapitalization, and have no higher early warning level of adjusted net capital for introducing brokers. Commentators should also address whether other elements of the early warning system relating to maintenance of books and records and material inadequacies should apply to introducing brokers.

M. Recordkeeping and Monthly Capital Computation

The Commission is proposing certain other minor amendments in the financial area. The Commission is proposing to amend § 1.18(a) to require an introducing broker to prepare and keep current the same type of financial records which an FCM must keep. The Commission is also proposing to amend § 1.18(b) to require an introducing broker to make a formal computation of its adjusted net capital and of its minimum financial requirements as of the close of business each month. The Commission currently requires an FCM to make such monthly computations.

N. Financial Surveillance and Monitoring by Self-Regulatory Organizations

As stated elsewhere, the Commission has been advised that NFA's bylaws will be amended to provide for the membership category of introducing broker and effectively to require all introducing brokers to become members of NFA. The Commission is proposing to amend § 1.52(a) to require each self-regulatory organization other than a contract market to adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for all of its member who are registered introducing brokers. The Commission is proposing to amend § 1.52(a) in this manner so that it would apply only to NFA and to any other futures association which may be registered under the Act (*see also* proposed § 1.3(ff)) because the Commission assumes that even if some introducing brokers are contract market members, the contract markets will not undertake financial surveillance and monitoring of introducing brokers as they do for member FCMs, since introducing brokers will not accept customer segregated funds. The Commission is also proposing to add references to introducing brokers in paragraphs (c), (g), (j), (k) and (l) of § 1.52.

IV. Amendments to Existing Regulations

The Commission is proposing to amend several of the definitions contained in § 1.3 either to conform to the recent amendments to the Act or to incorporate references to the new registration categories. Thus, the Commission is proposing to amend the definitions of "associated person" and "commodity trading advisor" and to add a definition of "introducing broker" to parallel the revisions to the Act made by the Futures Trading Act of 1982. Proposed §§ 1.3(aa), 1.3(bb), 1.33(mm).[105] The Commission is also proposing to amend the definition of the term "designated self-regulatory organization" to include references to introducing brokers. Proposed § 1.3(ff). Finally, the Commission is proposing to delete references to particular registrants in § 10.1(a) in order to make the Commission's Rules of Practice generally applicable to proceedings pursuant to Section 6(b) and 8a of the Act to deny, suspend, or revoke registration in any capacity.

The Commission is proposing to amend § 1.19 in order to extend to introducing brokers the prohibition on granting commodity options currently applicable to FCMs, except where those options are traded on or subject to the rules of a contract market. The Commission's proposals would allow introducing brokers to trade options only for their own accounts; nothing in the rules the Commission is proposing today would authorize an introducing broker to engage in option transactions for or on behalf of option customers. Thus, the Commission is not proposing to amend § 33.3(b) of its regulations[106] which, in general, restricts the solicitation and acceptance of orders from option customers to FCMs (and persons associated with those FCMs) which are members of the contract market on which the option is traded or which are a members of a registered futures association, such as the National Futures Association, which has established a program for the regulation of the option-related activities of its members. Thus, until such time as the Commission approves rules of a registered futures association which specifically provide for the regulation by that futures association of the option-related activities of introducing brokers, an introducing broker will be precluded from participation in the Commission's option pilot program other than as a purchaser or seller of options for its own account. Furthermore, and as discussed more fully below, the Commission is specifically requesting comments as to whether there should be further restrictions on the ability of an introducing broker to trade for its own account or to carry proprietary accounts, including proprietary accounts with option positions.

An introducing broker will also not be authorized to engage in dealer option transactions conducted pursuant to the provisions of Section 4c(d) of the Act[107] and Part 32 of the Commission's regulations.[108] In this regard, the Commission notes that the Futures Trading Act of 1982 in no way alters the previously-existing statutory proscriptions on who may offer and sell dealer options. The Commission therefore does not intend to amend Part 32 of its regulations to permit anyone other than registered futures commission merchants to engage in such transactions.

The Commission is proposing to require introducing brokers to open and carry each customer's account with a carrying FCM on a fully-disclosed basis. An introducing broker would similarly be required to transmit all customer

[104] Based on a required minimum dollar amount of $25,000 (*see* proposed § 1.17(a)(1)(ii)(A)), the early warning level would be $30,000 instead of $37,500.

[105] The proposed definition of the term "commodity trading advisor" would specify that only "the named fiduciary" of a defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") is to be excluded from that definition. *See* proposed § 1.3(bb)(v). The Commission's proposal is intended to make clear that only those persons who meet the statutory definition of an ERISA fiduciary (*see* 29 U.S.C. 1002(21)) and are subject to another regulatory framework covering their fiduciary activities may be excluded from the definition of "commodity trading advisor" and the Commission's regulatory framework for commodity trading advisors. The Commission specifically requests comment as to the proper interpretation regarding which ERISA fiduciaries, other than named fiduciaries of the plan, should be considered to be excluded from the definition of "commodity trading advisor."

[106] 17 CFR 33.3(b), *as amended by* 47 FR 56996, 57016 (December 22, 1982).

[107] 7 U.S.C. 6c(d), *as amended by* Futures Trading Act of 1982, Pub. L. No. 97-444, section 206(4), 96 Stat. 2301.

[108] 17 CFR Part 32, *as amended by* 47 FR 56996, 57016 (December 22, 1982).

orders either to that carrying futures commission merchant or to a floor broker, if the introducing broker "gives up" the name of (*i.e.*, identifies) its carrying FCM. Proposed § 1.57(a). In view of these proposed requirements, the Commission has not deemed it necessary to amend its segregation regulations (17 CFR 1.20–1.30, 1.32) or most of its other rules relating to customer accounts. For example, the Commission has not proposed to amend §§ 1.33 and 1.46 of its regulations because the FCM which carries accounts for an introducing broker will continue to supply the required confirmation, monthly, and purchase-and-sale statements.

The Commission is proposing, however, to require introducing brokers to prepare a time-stamped record of each customer order and a daily record or journal of all customer trades. These requirements currently apply to FCMs. By comparison, because introducing brokers would not be allowed to carry customer accounts, they would not be required to prepare the financial or contract ledgers required by §§ 1.35(b)(1) and (b)(2).

Although the Commission is proposing to require introducing brokers to introduce all of their customer accounts to a futures commission merchant on a fully-disclosed basis, the Commission has not proposed a similar rule for the "house" or other proprietary accounts [109] of the introducing broker. The Commission is nonetheless concerned that allowing introducing brokers to carry such accounts will necessarily increase the complexity of their operations and require the establishment and daily supervision of a "back office" solely for this purpose. The Commission is further concerned that allowing an introducing broker to carry these accounts could jeopardize the firm's stability in the event that any of the proprietary accounts became undermargined or had a debit balance which required the infusion of additional capital by the introducing broker. The Commission is, therefore, requesting comments on whether it should prohibit introducing brokers from carrying proprietary accounts, as well as accounts in non-regulated commodities such as those traded on foreign boards of trade. The Commission is specifically requesting comments on the appropriateness of such a restriction and advises interested persons that it may impose such a restriction as part of the final regulations adopted in this ruemaking proceeding. As discussed subsequently in this **Federal Register** release, further amendments to the Commission's reporting regulations may be required to extend those regulations to introducing brokers if such restrictions are not adopted.

The Commission is proposing amendmetns to two other sections of Part 1 of the regulations so that coverage of those provisions will be extended to introducing brokers as well as FCMs. Under Commission rule 1.55, an FCM must furnish a customer with a disclosure statement which sets forth the risks of commodity trading, and the customer must sign and date an acknowledgment stating that he received and understood the disclosure statement, before a commodity futures account may be opened for the customer. If a customer were to use the services of an introducing broker, the introducing broker would generally be responsible for furnishing such a disclosure statement to the customer and for obtaining and retaining the required customer acknowledgment. *See* proposed § 1.55(a) and (c). Although such a customer would open an account on a fully-disclosed basis with an FCM, and would be considered a customer of the FCM, the FCM would not have to furnish the same or an additional disclosure statement to any such customer which has received the disclosure statement from, and provided the required acknowledgment to, the introducing broker. Commercial prudence suggests that the introducing broker and FCM establish clearly between themselves which entity is responsible for furnishing the customer with the risk disclosure statement and obtaining and retaining the customer acknowledgment.

The Commission has also included a proposed new paragraph (d) of § 1.55. The Commission recently proposed a new § 1.55(d) which would require FCMs to disclose all material information to their customers.[110] The Commission has included in these proposals the language of proposed § 1.55(d) as it appeared in that earlier release and has merely added a reference to introducing brokers so that the provision would apply equally to introducing brokers and FCMs. The Commission is presently evaluating the comments received in response to its earlier proposal of § 1.55(d), so those persons who commented on that proposal need not comment again on this point. The Commission may in the near future adopt a final rule on this subject which would be applicable solely to FCMs. If such a rule is adopted, the Commission expects to include a reference to introducing brokers in that rule when final rules relating to introducing brokers are adopted. The substance of any such rule would, therefore, be the same for FCMs and introducing brokers.

The Commission is also proposing to amend § 1.56, which relates to the prohibition of guarantees against loss, so that is would apply to introducing brokers as well as to FCMs. The Commission believes, for essentially the same reasons that caused the Commission to adopt such a rule for FCMs,[111] that introducing brokers should not be able to represent that they will guarantee a customer against loss.

The Commission is proposing to amend §§ 4.23 and 4.32 of its regulations relating to CPOs and CTAs, respectively, to require pool operators and trading advisors to indicate in their itemized daily records whether a trade was placed with an introducing broker. The Commission is not proposing, however, to amend §§ 4.21 and 4.31 to require explicitly that CPOs and CTAs disclose any conflict of interest involving an introducing broker. *Compare* §§ 4.21(a)(3), 4.31(a)(5). The Commission believes that such amendments are unnecessary in view of the existing requirements in the Commission's CPO and CTA regulations which specify that disclosure of the information specified in those rules does not relieve a CPO or CTA from the obligation to disclose all material information to existing or prospective pool participants or clients. *See* §§ 4.21(h), 4.31(g).

The Commission is proposing to amend certain of its regulations relating to market sureveillance in order to establish for introducing brokers duties which are similar to those which presently apply to futures commission merchants. Specifically, under §15.05, the introducing broker which introduces an account of any foreign broker or trader would be deemed an agent of the foreign broker and its customers and an agent of the foreign trader for purposes of accepting service of any communication issued by the Commission.[112] Similarly, §§ 21.01, 21.02

[109] The term "proprietary account" is defined in Commission rule 1.3(y) to include, *inter alia*, the accounts of partners, officers, employees, and certain related individuals.

[110] 47 FR 52723 (November 23, 1982).

[111] *See* 46 FR 62841 (December 29, 1981).

[112] Although the futures commission merchant effecting a transaction for a foreign account would also continue to be the agent of both a foreign broker and its customers and of a foreign trader, the Commission is proposing to amend §15.05 because it believes that there may be instances in which service on the foreign parties could be better effected through the introducing broker.

and 21.03 would be amended to prescribe for introducing brokers duties similar to those imposed on futures commission merchants with regard to special calls for information. Thus, for example, introducing brokers would be obligated to provide certain information upon special call, as set forth in those rules, and introducing brokers would be prohibited from accepting any orders from customers who do not respond to selected special calls issued pursuant to § 21.03.[113]

The Commission is proposing to amend its trading standards regulations in Part 155 to make them applicable to introducing brokers. The definition of "affiliated person" would be extended to include the affiliated person of an introducing broker as well as affiliated person of an FCM and would have the same meaning in both contexts. As affiliated person of an introducing broker would thus be any general partner, officer, director, owner of more than ten percent of the equity interest, associated person or employee of the introducing broker, and any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons. *See* proposed § 155.1.

Minor amendments are also being proposed to §155.3, which sets forth the trading standards for FCMs. These amendments are intended to ensure that an FCM handles an account of an affiliated person of an introducing broker on the same basis that the FCM handles an account of an affiliated person of another FCM. The FCM would have to receive written authorization from a person designated by the introducing broker with the responsibility for surveillance of the account of that affiliated person before the FCM could knowingly handle such an account. In addition, the FCM would have to prepare written records of all orders for such an account. In addition, the FCM would have to prepare written records of all orders for such an account, and transmit such records on a regular basis to the introducing broker, along with all statements for such account. *See* proposed §§ 155.3(c) (1) and (3) and § 155.3(c)(2).

The Commission is also proposing a new rule, § 155.4, which would set forth trading standards for introducing brokers. The proposed rule is patterned after § 155.3. The proposed rule is designed to ensure that the "customer first" principle which applies to orders given to an FCM is extended to an introducing broker as well. Customer orders would thus have to be transmitted to the FCM carrying the account before the transmission of any similar order for a proprietary account of the introducing broker, for an account in which an affiliated person of the introducing broker has an interest, or for any account over which an affiliated person of the introducing broker has discretion. *See* proposed §155.4(a).

The introducing broker would not be permitted to disclose that it or any of its affiliated persons was holding the order of another person, nor could the introducing broker or any of its affiliated persons knowingly take the other side of a customer's order, except under certain specified conditions. *See* proposed § 155.4(b).

An affiliated person of an introducing broker could maintain an account with an FCM only if the affiliated person received written authorization to do so from a person designed by the introducing broker with the responsibility for surveillance of such activity. Copies of all statements for such an account, as well as all written records of orders for such an account prepared by the FCM, would have to be transmitted to the introducing broker on a regular basis. *See* proposed § 155.4(c).

The Commission assumes that some customers may grant discretion to introducing brokers and to associated persons of introducing brokers to make trades for them. (Such a grant of discretion will require the introducing broker to register as a CTA as well. *Compare* proposed § 4.14(a)(6).) The Commission is therefore proposing to amend § 166.2, which requires a customer's prior authorization to trade the customer's account, so that it would refer to introducing brokers and their associated persons.

The Commission is proposing two amendments in the Part 170 regulations, which relate to registered futures associations. The first amendment is a technical change to § 170.2 concerning membership restrictions. The references to particular registration categories would be eliminated so that the new categories discussed herein, as well as any additional categories created in the future, would be included. The second amendment would add a new § 170.10 relating to proficiency examinations and would permit a futures association to establish different training standards and proficiency examinations for persons registered in more than one capacity. Futhermore, if a person were exempt from registrations in a particular capacity, yet performed the fuctions of a person registered in such capacity, a futures association could require that person to meet training standards and pass a proficiency examination related to that exempted capacity.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[114] requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[115] The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[116] In that statement, the Commission concluded that neither FCMs nor registered CPOs should be considered to be small entities for purposes of the RFA. With respect to FCMs, the Commission's determination was based in part upon their obligation to meet the Capital requirement established by the Commission and the purposes of protecting financial integrity, as well as the fiduciary nature of the FCM-customer relations.[117] As for CPOs, the Commission determined that registered CPOs are not small entities based upon its existing regulatory standard for exempting certain small CPOs from the requirement to register under the Act.[118] (A CPO need not register with the Commission if the gross capital contributions for all pools under its management do not exceed $200,000 and there are not more than fifteen participants in any one of the those pools.) Thus, with respect to FCMs and registered CPOs, pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that these proposed rules will not have a significant economic impact on a

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[113] As discussed elsewhere in this Federal Register notice, the Commission is considering whether it should prohibit introducing brokers from carrying proprietary accounts and is requesting comments on that issue. If introducing brokers are allowed to carry such accounts, and such accounts are carried on an amnibus basis, the Commission contemplates that it will need to amend §§ 1.37(b), 15.01(b), Part 17, 21.02(g)(3), 21.03(e)(1), and 21.03(e)(1)(iv) of its regulations. The Commission wishes to give notice that if, after consideration of the comments on this ussue and the Commission's own further deliberations, the Commission allows introducing brokers to carry proprietary accounts, it will likely amend those regulations to make them applicable to introducing brokers.

[114] 5 U.S.C. 601 *et seq.*

[115] By its terms, the RFA does not apply to "individuals." *Compare* S. 299, 96th Cong., 1st Sess. (Jan. 31, 1979). Because associated persons must be individuals, (*see* Section 4k of the Act and proposed § 1.3(aa)), the RFA does not apply to APs and no analysis of the economic impact of this rule proposal on such persons is required.

[116] 47 FR 18618–21 (April 30, 1982).

[117] *Id.* at 18619.

[118] *Id.* at 18619–20.

substantial number of small entities. The Commission nonetheless invites comments from any firm which believe that these rules would have a significant economic impact on its operations.

The Commission has also determined that, with respect to floor brokers, any rule proposal should be evaluated for its economic impact at the time it is proposed.[119] To the extent that floor brokers can be considered to be small entities, both the proposed increase in the registration fee and the proposed fingerprinting requirement for certain floor brokers upon re-entry into the business following a lapse of registration implement the regulatory scheme contained in the Futures Trading Act of 1982, as discussed above, and the economic effect on floor brokers of both provisions, if adopted, would be slight.

As with floor brokers, the Commission similarly decided in its policy statement to evaluate within the context of a particular rule proposal whether all or some CTAs should be considered to be small entities, and if so, to then analyze the economic impact on them of any such rule.[120] In this regard, as is the case with floor brokers, the Commission does not consider either the proposed increase in the registration fee or the proposed fingerprinting requirement for certain CTAs upon re-entry into the business following a lapse of registration to have significant economic impact. The Commission is also aware that, if adopted as proposed, § 1.57 would require those CTAs which are compensated either by their customers or by an FCM on a "per-trade" basis or which receive a fee from an FCM for the referral of customers, to register as introducting brokers and to comply with the rules governing introducing brokers. Assuming arguendo that, for purposes of § 1.57, some CTAs are in fact small entities, the Commission has considered whether such a rule would have a significant impact on such entities.[121]

As discussed more fully above, the Commission believes that it is necessary to include within the introducing broker category those CTAs which, in essence, accept or solicit orders for the purchase or sale of futures contracts on behalf of one or more FCMs. Significantly, an alternative to registration as an introducing broker is available to those small CTAs which do business as sole proprietorships in that any such introducing broker may instead register as an AP of an FCM, thereby making compliance with the principal obligations of an introducing broker (such as the minimum capital and reporting requirement) unnecessary. An extensive description of the proposed regulatory responsibilities of introducing brokers has already been provided above. In general, the regulations governing CTAs and introducing brokers neither conflict nor are inconsistent. To the extent that the rules relating to CTAs and introducing brokers would overlap (as, for example, with respect to certain recordkeeping requirements), any such duplication would simply mean that the particular task need not be performed twice.

As discussed above with respect to floor brokers, the Commission does not believe that the registration fee proposed herein for introducing brokers would constitute a significant financial burden and the Commission further believes that the fee for obtaining an introducing broker license is a relatively insignificant cost of doing business. Moreover, the Futures Trading Act of 1982 specifically authorizes the assessment of fees for the processing of applications for registration.[122] The Commission further notes that the proposed fee would be the same as that proposed for CTAs and floor brokers; by comparison, the fee for FCMs would be substantially higher.

Inasmuch as introducing brokers did not exist when the Commission drafted its April 1982 policy statement concerning the definition of small entities, the Commission has not addressed the question of whether such persons are, in fact, small entities for purposes of the RFA. The Commission has sought to integrate introducing brokers into the existing regulatory structure governing FCMs with such modifications as appear to be appropriate. The Commission does not believe that there are regulatory alternatives to those being proposed which would be consistent with the statutory mandate to provide protection to the public against irresponsible or fraudulent business practices.

For purposes of the RFA and future rulemakings, the Commission is hereby proposing that introducing brokers not be considered to be "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.[123] As with FCMs, a requirement to maintain a specified level of adjusted net capital would be imposed upon introducing brokers to ensure that they maintain sufficient capital resources to guarantee their financial accountability and to promote responsible and reliable business operations. The Commission's proposed determination is also based on its experience with agents of FCMs, through which a considerable volume of customer business is secured.

As explained in the text above, once those agents are registered as introducing brokers and come within the regulatory framework governing introducing brokers, the Commission does not believe that these entities should continue to be viewed as small businesses for purposes of the RFA. The Commission's position is not inconsistent with the statement in the House Report accompanying the bill which became the Futures Trading Act of 1982 that many agents are individuals or small businesses.[124] This passing reference in the House Report was not intended to require application of the RFA to introducing brokers. In fact, insofar as many agents are individuals, the RFA does not directly apply to them. Moreover, Congress intended to apply standards of financial integrity for both introducing brokers and FCMs, regardless of size. Thus, the House Report stated:

> Although agents may perform the same functions as branch officers of futures commission merchants, agents generally are separately owned and run. Futures commission merchants frequently disavow any responsibility for sales abuses or other violations committed by these agents. The Committee believes that the best way to protect the public is to create a new and separate registration category for "agents" (*e.g.*, as introducing brokers.) * * *.
>
> The new registration category of "introducing broker" would encompass persons who solicit or accept futures orders but who do not handle customer funds, and in the case of individuals, who elect to be registered as introducing brokers rather than associated persons * * *.
>
> * * * * *
>
> In addition to permitting greater review of qualifications, the proposed amendment would allow the Commission or NFA to set minimum financial and other standards for introducing brokers, analogous to those presently in effect for futures commission merchants. Compliance with these standards could be monitored and enforcement action could be taken when necessary. Thus, in place of the lack of regulation that now exists for agents, the proposed amendment would fully integrate these persons into the regulatory structure administered by the Commission under the Act.[125]

The Commission believes that, as with FCMs, no regulatory distinctions can be made among introducing brokers in spite of any size differences that may

[119] *Id.* at 18620.
[120] *Id.*
[121] *See* 5 U.S.C. 603.
[122] Pub. L. No. 97-444, §§ 223, 237, 96 Stat. 2310, 2326.
[123] 47 FR at 18619.
[124] H.R. Rep. No. 565, 97th Cong., 2d Sess. 49 (1982).
[125] *Id.*

exist among them in light of the nature of the relationship between an introducing broker and its customers and the need to protect financial integrity. The minimum capital, bookkeeping, and recordkeeping requirements authorized by Congress apply equally to all introducing brokers regardless of size, and are necessary to provide adequate customer protection. Moreover, the Commission wishes to note that it has sought to fashion its proposed regulatory program for introducing brokers in a manner which is responsive to the function, purposes, and size of the entity being regulated consistent with the objective of the RFA. In particular, the Commission believes that its proposed $25,000 minimum capital requirement would appropriately effectuate the Congressional purpose that introducing brokers have a sufficient reserve of capital to remain economically viable yet would not be so onerous as to constitute a barrier to the entry into, or continuation, in the commodities industry. For the reasons stated above, the Commission hereby proposes not to define introducing brokers as small entities for RFA purposes.

Consequently, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules contained herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any firm which believes that these rules, as proposed, would have a significant economic impact on its operations.

B. Paperwork Reduction Act

The Commission has submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35), an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement these proposals. Since several of the proposals contained herein consist of proposed amendments to rules which have already been assigned OMB control numbers, the Commission assumes that the amended rules will be assigned the same OMB control number. Similarly, since the Commission is proposing that the new categories of registrant use amendments to existing forms in order to comply with registration and financial reporting requirements, those forms, as amended, will in all likelihood retain the same OMB control number which they have at present.

Interested members of the public may obtain a complete copy of the information collection proposals relating to the proposed rules contained herein by contacting Joseph Salazar at (202) 254-9735. Persons wishing to comment on the Paperwork Reduction Act implications of these proposals are asked to send a copy of their comments to Mr. Salazar at the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, and to the OMB Desk Officer for the agency, Robert Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

List of Subjects

17 CFR Part 1

Financial requirements, Reporting and recordkeeping requirements, Customer protection, Definitions, Registration requirements, Risk disclosure statements, Segregated funds, Introducing brokers.

17 CFR Part 3

Registration requirements, Authority delegations, Fingerprinting, associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants.

17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Associated persons, Recordkeeping requirements.

17 CFR Part 10

Administrative practice and procedure.

17 CFR Part 15

Reports by agents, Foreign brokers, Foreign traders, Introducing brokers.

17 CFR Part 21

Special calls for information, Introducing brokers.

17 CFR Part 145

Records, Freedom of Information Act.

17 CFR Part 147

Records, Sunshine Act.

17 CFR Part 155

Trading standards, Introducing brokers.

17 CFR Part 166

Authorization to trade, Customer protection.

17 CFR Part 170

Futures association, Authority delegation.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1), 4, 4b, 4d, 4e, 4f, 4g, 4h, 4i, 3k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15 and 17 thereof, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9., 9a and 13b, 12, 12a, 18, 19 and 21, *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294 (1983), and pursuant to the authority contained in Pub. L. No. 97-444, § 237, 96 Stat. 2326, and in 5 U.S.C. 552 and 552b, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3 is proposed to be amended by revising paragraphs (aa), (bb), and (ff) and by adding paragraph (mm) to read as follows:

§ 1.3 Definitions.

* * * * *

(aa) *Associated person.* This term means any natural person who (as provided in Section 4k of the Act) is associated in any of the following capacities with:

(1) A futures commission merchant as a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged;

(2) An introducing broker as a partner, officer, employee, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged;

(3) A commodity pool operator as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged; or

(4) A commodity trading advisor as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's

or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged.

(bb) *Commodity trading advisor.* This term means any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under Section 4c of the Act, or any leverage transaction authorized under Section 19 of the Act, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the named fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation or order: *Provided,* That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: *Provided further,* That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.

* * * * *

(ff) *Designated self-regulatory organization.* This term means a self-regulatory organization of which a futures commission merchant or an introducing broker is a member, or if a futures commission merchant or an introducing broker is a member of more than one self-regulatory organization and such futures commission merchant or introducing broker is the subject of an approved plan under § 1.52, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such futures commission merchant or introducing broker for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the futures commission merchant or introducing broker is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such futures commission merchant or introducing broker.

* * * * *

(mm) *Introducing broker.* This term means any person, except a natural person who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

2. Section 1.10 is proposed to be amended by revising the section heading and paragraphs (a)(2), (a)(3), (b)(1), (b)(3), (d)(1), (d)(2), (e), (g), and (h) of § 1.10 to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section, each person who files an application for registration as a futures commission merchant or as an introducing broker, and who is not so registered at the time of such filing, must, concurrently with the filing of such application file either: (i) A form 1-FR certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed, or (ii) a form 1-FR as of a date not more than 45 days prior to the date on which such report is filed and a form 1-FR certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed. Each such person must include with such financial report a statement describing the source of his current asset and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(3) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another futures commission merchant or another introducing broker. Each such person who files an application for registration as a futures commission merchant or as an introducing broker and who is not so registered in that capacity at the time of such filing must file a form 1-FR as of the first monthend following the date on which his registration is approved. Such report must be filed with the Commission and the designated self-regulatory organization, if any, not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1) Except as provided in paragraph (b)(3) of this section, each person registered as a futures commisson merchant or as an introducing broker must file a form 1-FR for each fiscal quarter of each fiscal year unless the registrant elects pursuant to paragraph (e)(2) of this section to file a form 1-FR for each calendar quarter of each calendar year. Each form 1-FR must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any form 1-FR which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 90 days after the close of each registrant's fiscal year.

* * * * *

(3) The provisions of paragraphs (b)(1) and (b)(2) of this section may be met by any person registered as a futures commission merchant or as an introducing broker who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after the effective date of these regulations by the Commission pursuant to Section 4f(2) of the Act and § 1.52: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

* * * * *

(d) *Contents of financial reports.* (1) Each form 1-FR filed pursuant to this § 1.10 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain: (i) A statement of financial condition as of the date for which the report is made; (ii) a statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made; (iii) a statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made; (iv) for a futures commisson merchant only, a schedule of segregation requirements and funds on deposit in segregation as of the date for which the report is made; and (v) in addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each form 1-FR filed pursuant to this § 1.10 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain: (i) A statement of financial condition as of the date for which the report is made; (ii) statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: *Provided*, That for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the statement of financial condition; (iii) a statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made; (iv) for a futures commission merchant only, a schedule of segregation requirements and funds on deposit in segregation as of the date for which the report is made; (v) appropriate footnote disclosures; and (vi) in addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

* * * * *

(e) *Election of fiscal year.* (1) Any applicant or registrant wishing to establish a fiscal year other than the calendar year may do so by notifying the Commission and the designated self-regulatory organization, if any, of its election of such fiscal year in writing, concurrently with the filing of the form 1-FR pursuant to paragraph (a)(2) of this section, but in no event may such fiscal year end more than one year from the date of the form 1-FR filed pursuant to paragraph (a)(2) of this section. An applicant or registrant which does not so notify the Commission and the designated self-regulatory organization, if any, will be deemed to have elected the calendar year as its fiscal year. A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year is approved upon written application to the principal office of the Commission in Washington, D.C., and written notice of such change is given to the designated self-regulatory organization, if any.

(2) Any applicant or registrant may elect to file its form 1-FR for each calendar quarter in lieu of each fiscal quarter by notifying the Commission and the designated self-regulatory organization, if any, of its election, in writing, concurrently with the filing of the form 1-FR pursuant to paragraph (a)(2) of this section. Any registrant wishing to change such election or to make such election other than concurrently with the filing of the form 1-FR pursuant to paragraph (a)(2) of this section may do so only if such change or election is approved by the Commission upon written application to the principal office of the Commission in Washington, D.C., and written notice of such change is given to the designated self-regulatory organization, if any.

* * * * *

(g) *Nonpublic treatment of reports.* All of the forms 1-FR filed pursuant to this section will be public: *Provided, however*, That if the statement of financial condition, the computation of the minimum capital requirements pursuant to § 1.17, and the schedule (to be filed by a futures commission merchant only) of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of form 1-FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter. All of the copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, filed pursuant to paragraph (h) of this section will be public: *Provided, however*, That if the statement of financial condition, the computation of net capital, and the schedule (to be filed by a futures commission merchant only) of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (g) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition. The independent accountant's opinion filed pursuant to this section will be deemed public information.

(h) *Filing option available to a futures commission merchant or an introducing broker which is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a)(2), (b) and (c) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR: *Provided, however*, That all information which is required to be furnished on and submitted with form 1-FR is provided with such Report.

3. Section 1.12 is proposed to be amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) Each person registered as a futures commission merchant or as an introducing broker, or who files an application for registration as a futures commission merchant or as an introducing broker, who knows or should have known that its adjusted net capital at any time is less than the minimum required by § 1.17 or by the capital rule of any self-regulatory organization to which such person is subject, if any, must:

(1) Give telegraphic notice as set forth in paragraph (g) of this section that such applicant's or registrant's adjusted net capital is less than is required by § 1.17 or by such other capital rule, identifying the applicable capital rule. This notice

must be given with 24 hours after such applicant or registrant knows or should have known that its adjusted net capital is less than is required by any of the aforesaid rules to which such applicant or registrant is subject; and

(2) If the person is a futures commission merchant or applicant therefor, within 24 hours after giving such notice file a statement of financial condition, a statement of the computation of the minimum capital requirements pursuant to § 1.17 (computed in accordance with the applicable capital rule), and a schedule of segregation requirements and funds on deposit in segregation, all as of the date such applicant's or registrant's adjusted net capital is less than the minimum required; or

(3) If the person is an introducing broker or applicant therefor, within 24 hours after giving such notice file a statement of financial condition and a statement of the computation of the minimum capital requirements pursuant to § 1.17 (computed in accordance with the applicable capital rule) all as of the date such applicant's or registrant's adjusted net capital is less than the minimum required.

(b)(1) Each person registered as a futures commission merchant, or who files an applicant for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than the greatest of:

(i) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(1)(i)(A);

(ii) 6 percent of the following amount: the customer funds required to be segregated pursuant to section 4d(2) of the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however*, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or,

(iii) For securities brokers or dealers, the amount of net capital specified in Rule 17a-11(b) of the Securities and Exchange Commission (17 CFR 240.17a-11(b))

must file written notice to that effect as set forth in pararaph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a form 1-FR (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR) or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

(2) Each person registered as an introducing broker, or who files an applicant for registration as an introducing broker, who knows or should have known that its adjusted net capital at any time is less than the greater of:

(i) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(ii)(A), or,

(ii) For securities brokers or dealers, the amount of net capital specified in Rule 17a.11(b) of the securites and Exchange Commission (17 CFR 240.17a-11(b)),

must file written notice to that effect as set forth in pararaph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a form 1-FR (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR) or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

* * * * *

4. Section 1.16 is proposed to be amended by revising paragraphs (c) (5), (d), and (f)(1) to read as follows:

§ 1.16 Qualifications and reports of accountants.

* * * * *

(c) * * *

(15) *Accountant's report on material inadequacies.* A registrant must file concurrently with the annual audit report a supplemental report by the accountant describing any material inadequacies found to exist or found to have existed since the date of the previous audit. An applicant must file concurrently with the audit report a supplemental report by the accountant describing any material inadequacies found to exist as of the date of the form 1-FR being filed: *Provided, however*, That if such applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, and it files (in accordance with § 1.10(h)) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR the accountant's supplmental report must be made as of the date of such report. The supplemental report must indicate any corrective action taken or proposed by the applicant or registrant in regard thereto. If the audit did not disclose any material inadequacies, the supplemental report must so state.

(d) *Audit objective.* (1) The audit must be made in accordance with generally accepted auditing standards and must include a review and appropriate tests of the accounting system, the internal accounting control, and the procedures for safeguarding customer and firm assets in accordance with the provisions of the Act and the regulations thereunder, since the prior examination date. The audit must include all procedures necessary under the circumstances to enable the independent licensed or certified public accountant to express an opinion on the financial statements and schedules. The scope of the audit and review of the accounting system, the internal controls, and procedures for safeguarding customer and firm assets must be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in (i) the accounting system, (ii) the internal accounting controls, and (iii) the procedures for safeguarding customer and firm assets (including, in the case of a futures commission merchant, the segregation requirements of Section 4d(2) of the Act and these regulations) will be discovered. Additionally, as specified objectives the audit must include reviews of the practices and procedures followed by the registrant in making (*a*) periodic computations of the minimum financial requirements pursuant to § 1.17 and (*b*) in the case of a futures commission merchant, daily computations of the segregation requirements of Section 4d(2) of the Act and these regulations.

(2) A material inadequacy in the accounting system, the internal accounting controls, the procedures for safeguarding customer and firm assets, and the practices and procedures referred to in paragraph (d)(1) of this section which is to be reported in accordance with paragraph (e)(2) of this section includes any conditions which contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to:

(i) Inhibit an applicant or registrant from promptly completing transactions or promptly discharging his responsibilities to customers or other creditors;

(ii) Result in material financial loss;

(iii) Result in material misstatement of the applicant's or registrant's financial statements and schedules; or

(iv) Result in violations of the Commission's segregation (in the case of a futures commission merchant), recordkeeping or financial reporting requirements to the extent that could reasonably be expected to result in the conditions described in paragraphs (d)(2) (i), (ii), or (iii) of this section.

* * * * *

(f) *Extension of time for filing audited reports.* (1) In the event any applicant or registrant finds that it cannot file its certified financial statements and schedules for any year within the time specified in § 1.10 without substantial undue hardship, it may file with the principal office of the Commission in Washington, D.C., an application for extension of time to a specified date not more than 90 days after the date as of which the certified financial statements and schedules were to have been filed. Notice of such application must be sent to the designates self-regulatory organization, if any. The application must be made by the applicant or registrant and must: (i) State the reasons for the requested extension; (ii) indicate that the inability to make a timely filing is due to circumstances beyond the control of the applicant or registrant, if such is the case, and describe briefly the nature of such circumstances; (iii) be accompanied by the latest available formal computation of his adjusted net capital and minimum financial requirements computed in accordance with § 1.17; (iv) in the case of a futures commission merchant, be accompanied by the latest available computation of required segregation and by a compulation of the amount of money, securities, and property segregated on behalf of customers as of the date of the latest available computation; (v) contain an agreement to file the report on or before the date specified by the applicant or registrant in the application; (vi) be received by the principal office of the Commission in Washington, D.C. and by the designates self-regulatory organization, if any, prior to the date on which the report is due; and (vii) be accompanied by a letter from the independent public accountant answering the following questions:

(A) What specifically are the reasons for the extension request?

(B) On the basis of that part of your audit to date, do you have any indication that may cause you to consider commenting on any material inadequacies in the accounting system, internal accounting controls or procedures for safeguarding customer or firm assets?

(C) Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in § 1.17 or (in the case of a futures commission merchant) the segregation requirements of Section 4d(2) of the Act and these regulations, or has any significant financial or recordkeeping problems?

* * * * *

5. Section 1.17 is proposed to be amended by revising the section heading and paragraphs (a), (c)(4)(ii), (c)(4)(iii), (c)(5)(iii), (c)(5)(v), (e)(1), (h) (2)(vi)(C), (h)(2)(vii)(A), (h)(2)(vii)(B), (h)(2)(viii)(A), (h)(3)(ii) and (h)(3)(v) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) Except as provided in paragraph (a)(2) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $50,000 ($100,000 for each person registered as a futures commission merchant who is not a member of a designated self-regulatory organization), or

(B) Four percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account, or

(C) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(ii) Except as provided in paragraph (a)(2) of this section, each person registered as an introducing broker must maintain adjusted net capital equal to or in excess of the greater of:

(A) $25,000 ($50,000 for each person registered as an introducing broker who is not member of a designated self-regulatory organization), or

(B) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(2) The requirements of paragraph (a)(1) of this section shall not be applicable if the registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to Section 4f(2) of the Act and § 1.52 after the effective date of this regulation.

(3) No person applying for registration as a futures commission merchant or as an introducing broker shall be so registered unless such person affirmatively demonstrates to the satisfaction of the Commission that it complies with the financial requirements of this § 1.17. Each registrant must be in compliance with this § 1.17 at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization.

(4) A futures commission merchant who is not in compliance with this §1.17, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must transfer all customer accounts and immediately cease doing business as a futures commission merchant until such time as the firm is able to demonstrate such compliance: *Provided, however,* The registrant may trade for liquidation purposes only unless otherwise directed by the Commission and/or the designated self-regulatory organization: *And, Provided further,* That if such registrant immediately demonstrates to the satisfaction of the Commission or

the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

(5) An introducing broker who is not in compliance with this § 1.17, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must immediately cease doing business as an introducing broker until such time as the registrant is able to demonstrate such compliance: *Provided, however,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to cease doing business as required above. If the introducing broker is required to cease doing business in accordance with this paragraph (a)(5), the introducing broker must immediately notify each of its customers and the future commission merchants carrying the account of each customer that it has ceased doing business. Nothing in this paragraph (a)(5) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

* * * * *

(c) * * *

(4) * * *

(ii) Excludes, in the case of a futures commission merchant, the amount of money, securities and property due to commodity futures or option customers which is held in segregated accounts in compliance with the requirements of the Act and these regulations: *Provided, however,* That such exclusion may be taken only if such money, securities and property held in segregated accounts have been excluded from current assets in computing net capital;

(iii) Includes, in the case of an applicant or registrant who is a sole proprietor, the excess of liabilities which have not been incurred in the course of business as a futures commission merchant or as an introducing broker over assets not used in the business;

* * * * *

(5) * * *

(iii) In the case of a futures commission merchant, four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market;

* * * * *

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant with securities in segregation pursuant to Section 4d(2) of the Act and these regulations which were not deposited by customers, the percentages specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) ("securities haircuts") and 100 percent of the value of "nonmarketable securities" as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii)), or where appropriate, for securities brokers or dealers the percentages specified in Rule 240.15c3–1(f) of the Securities and Exchange Commission (17 CFR 240.15c3–1(f)):

* * * * *

(e) * * *

(1) Either adjusted net capital of any of the consolidated entities would be less than the greatest of: (i) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (ii) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (iii) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1(e) of the Securities and Exchange Commission (17 CFR 240.15c3–1(e)); or

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (h)(2)(vi)(B) of this section, the lender, with the prior written consent of the applicant or registrant and the designated self-regulatory organization, or, if the applicant or registrant is not a member of a designated self-regulatory organization, then the Commission, may reduce the unpaid principal amount of the secured demand note: *Provided,* That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than the greatest of: (*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (*2*) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (*3*) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(6)(iii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(6)(iii)): *Provided, further,* That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn.

(vii) *Permissive prepayments and special prepayments.* (A) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as "prepayment"), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (h)(3)(v) of this section nor shall it apply to "special prepayments" made in accordance with the provisions of paragraph (h)(2)(vii)(B) of this section. No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of: (*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (*2*) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (*3*) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(b)(7) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(b)(7)). Notwithstanding the above, no prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(B) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment at any time of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "special prepayment"). No special prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of: (*1*) 200 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (*2*) for a futures commission merchant or applicant therefor, 10 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (*3*) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(c)(5)(ii) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c)(5)(ii)): *Provided further,* That no special prepayment shall be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital. Notwithstanding the above, no special prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such payment obligation), the adjusted net capital of the applicant or registrant would be less than the greatest of: (*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (*2*) for a futures commission merchant or applicant therefor, 6 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (*3*) for an applicant or registant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(b)(8)(i) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(b)(8)(i)): *Provided,* That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) for a period of not less than six months, the applicant or registrant shall then commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section.

* * * * *

(3) * * *

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the designated self-regulatory organization and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, its adjusted net capital would be less than: (A) 120 percent of the minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (B) for a futures commission merchant or applicant therefor, 6 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (C) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(c)(2) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c)(2)).

* * * * *

(v) *Temporary Subordinations.* To enable an applicant or registrant to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than three occasions in any 12-month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective: *Provided,* That this temporary relief shall not apply to any applicant or registrant if the adjusted net capital of the applicant or registrant is less than the greatest of: (A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (B) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; (C) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(i)); or (D) the amount of equity capital as defined in paragraph (d) of this section is less than the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

* * * * *

6. Section 1.18 is proposed to be revised to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on form 1–FR or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1–FR, the account classification subdivisions specified on such Report, or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. An applicant or registrant which is also registered as a securities broker or dealer with the Securities and Exchange Commission may meet the computation requirements of this paragraph by completing the Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA. Such computations must be completed and made available for inspection by any representative of the Commission or designated self-regulatory organization, if any, within 30 days after the date for which the computations are made, commencing the first monthend after the date the application for registration is filed.

7. Section 1.19 is proposed to be revised to read as follows:

§ 1.19 Prohibited trading in certain options.

No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except for commodity options traded on or subject to the rules of a contract market in accordance with the requirements of Part 33 of this chapter.

8. Section 1.35 is proposed to be amended by revising paragraphs (a), (a–1)(1), and the introductory paragraph of (b) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

(a) *Futures commission merchants, introducing brokers, and members of contract markets.* Each futures commission merchant, introducing broker, and member of a contract market shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, commodity options, and cash commodities. Each futures commission merchant, introducing broker, and member of a contract market shall retain the required records, data, and memoranda in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by any authorized representative of the Commission or the United States Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda which have been prepared in the course of its business of dealing in commodity futures, commodity options, and cash commodities.

(a–1) *Futures commission merchants, introducing brokers, and members of contract markets: Recording of customers' and option customers' orders.* (1) Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of such order, including the account identification and order number, and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

* * * * *

(b) *Futures commission merchants, introducing brokers, and clearing members of contract markets.* Each futures commission merchant and each clearing member of a contract market and, solely for purposes of paragraph (b)(3) of this section, each introducing broker shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

* * * * *

9. Section 1.37 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

(a) Each futures commission merchant, introducing broker, and member of a contract market shall keep a record in permanent form which shall show for each commodity futures or option account carried or introduced by it the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. For each such commodity option account, the records kept by such futures commission merchant and member of a contract market must also show the name of the person who has solicited and is responsible for each option customer's account, the appropriate occupational code or codes for such account from the list of such codes that may be promulgated by the Commission, and a symbol indicating whether the option customer is a commercial or non-commercial for each commodity option for which commodity option positions are carried for the option customer.

* * * * *

10. Section 1.52 is proposed to be amended by revising paragraphs (a), (c), (g), (j), (k) and (l) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c): *Provided, however,* A designated self-regulatory organization may determine the number of form 1–FRs it receives from its member registrants so long as it requires at least semiannual form 1–FRs, one of which must be certified in accordance with § 1.16 for each such registrant: *Provided, further,* A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1–FR.

* * * * *

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered futures commission merchant or any registered introducing broker which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the financial reports necessitated by such minimum financial and related reporting requirements.

Such plan may also delegate the responsibility of monitoring, and examining the books and records kept by, such registered futures commission merchant or registered introducing broker relating to its business of dealing in commodity futures, commodity options, and cash commodities, insofar as such business relates to its dealings on contract markets, as required by § 1.51(a)(3) and/or Part 33 of this chapter.

* * * * *

(g) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;

(2) Is for the protection and in the interest of customers or option customers;

(3) Reduces multiple monitoring and auditing for compliance with the minimum financial rules of the self-regulatory organizations submitting the plan for any futures commission merchant or introducing broker which is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant or introducing broker which is a member of more than one self-regulatory organization;

(5) Posters cooperation and coordination among the contract markets; and

(6) Does not hinder the develoment of a registered futures association under Section 17 of the Act.

* * * * *

(j) Whenever a registered futures commission merchapt or a registered introducing broker holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, D.C. and send a copy of that notification to such futures commission merchant or such introducing broker.

(k) Nothing in this § 1.52 shall preclude the Commission from examining any futures commission merchant or introducing broker for compliance with the minimum financial and related reporting requirements to which such futures commission merchant or introducing broker is subject.

(l) In the event a plan is not filed and/or approved for each registered futures commission merchant or for each registered introducing broker which is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those futures commission merchants or introducing brokers which are not the subject of an approved plan (under paragraph (g) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (c) of this section.

11. Section 1.55 is proposed to be amended by revising paragraphs (a) and (c) and by adding paragraph (d) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a) No futures commission merchant or introducing broker may open a commodity futures account for a customer unless the futures commission merchant or introducing broker first: (1) Furnishes the customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions); and (2) receives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure statement.

* * * * *

(c) The acknowledgment required by paragraph (a) of this section must be retained by the futures commission merchant or introducing broker in accordance with § 1.31.

(d) This section does not relieve a futures commission merchant or introducing broker from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective customers even if the information is not specifically required by this section.

12. Section 1.56 is proposed to be amended by revising the introductory paragraph of (b), (c) and the introductory paragraph of (d) to read as follows:

§ 1.56 Prohibition of guarantees against loss.

* * * * *

(b) No futures commission merchant or introducing broker may in any way represent that it will, with respect to any commodity interest in any account carried by the futures commission merchant for or on behalf of any person:

* * * * *

(c) No person may in any way represent that a futures commission merchant or introducing broker will engage in any of acts or practices described in paragraph (b) of this section.

(d) This section shall not be construed to prevent a futures commission merchant or introducing broker from:

* * * * *

13. Section 1.57 is proposed to be added and, as added, would read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) Each introducing broker must—

(1) Open and carry each customer's account with a carrying futures commission merchant on a fully-disclosed basis; and

(2) Transmit promptly for execution all customer orders to: (i) A carrying futures commission merchant; or (ii) a floor broker, if the introducing broker identifies its carrying futures commission merchant.

(b) Any person who, directly or indirectly, is compensated (i) on a per-trade basis, or (ii) for the referral of customers to a futures commission merchant, must register under the Act as an introducing broker: *Provided*, That the provisions of this paragraph (b) shall not apply to any person who is registered under the Act as a futures commission merchant, a floor broker, an associated person of a futures commission merchant, or as an associated person of an introducing broker.

PART 3—REGISTRATION

14. The authority citation for Part 3 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a and 13c; Sec. 237, Pub. L. 97-444.

15. Section 3.1 is proposed to be amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 3.1 Definitions.

* * * * *

(b) *Current*. As used in §§ 3.10-3.15, a current Form 8-R or Form 94 is any such Form which was filed by or on behalf of a registrant or principal on or before July 1, 1982 if, subsequent to the filing of that Form, the registrant or principal has been continuously registered or continuously affiliated with a registrant as a principal.

(c) *Sponsor*. Sponsor means the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, respectively, which makes the certifications required by § 3.12(c)(1) or the certifications provided by § 3.12(d)(1) for the registration of an associated person of such sponsor.

16. Section 3.2 is proposed to be revised to read as follows:

§ 3.2 Registration in one capacity not included in registration in any other capacity.

Except as 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: *Provided further*, That except as may be provided in the Act or in any rule, regulation or order of the Commission, registration as an associated person in one capacity shall not automatically include registration as an associated person in any other capacity.

17. Section 3.3 is proposed to be revised to read as follows:

§ 3.3 Registration fees.

(a) *Amount of fees.*—(1) *Futures commission merchants*. Each application for registration, or for renewal thereof, as a futures commission merchant must be accompanied by a fee of $300.

(2) *Introducing brokers, commodity trading advisors, and commodity pool operators*. Each application for registration, or for renewal thereof, as an introducing broker, commodity trading advisor, or commodity pool operator must be accompanied by a fee of $100.

(3) *Associated persons*. Each Form 8-R submitted in connection with the registration of an associated person must be accompanied by a fee of $50 for each registration capacity for which application is made. Each Form 3-R submitted in accordance with the provisions of § 3.31(d) must be accompanied by a fee of $10 for each associated person specified on that Form 3-R.

(4) *Floor brokers*. Each application for registration, or for renewal thereof, as a floor broker must be accompanied by a fee of $50.

(5) *Branch offices*. In addition to the fees specified in paragraphs (a)(1) and (a)(2) of this section, each futures commission merchant, introducing broker, commodity trading advisor, and commodity pool operator must provide a fee of $10 for each branch office of the applicant or registrant, specified in Form 7-R or in any Schedule thereto or in any Form 3-R filed with the Commission to report the addition of a branch office, operating within the United States and authorized to engage in activities subject to regulation by the Commission on behalf of the applicant or registrant. The fee specified by this paragraph (a)(5) must accompany each Form 7-R filed as an application for initial registration or for renewal of registration and each Form 3-R filed to report the addition of a branch office.

(6) *Principals*. Each Form 8-R submitted for or on behalf of a principal must be accompanied by a fee of $50 unless the same Form 8-R is being submitted in connection with the registration of an associated person or floor broker.

(7) *Separate fees for each registration capacity*. An applicant for registration, or for renewal thereof, must provide the fees specified in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section for each capacity for which application is made.

(b) *Form of remittance; fees not refundable*. Registration fees must be remitted by check, bank draft, or money order, payable to the Commodity Futures Trading Commission. All registration fees are nonrefundable, unless the applicant withdraws the application before any processing of that application has occurred.

18. Section 3.4 is proposed to be revised to read as follows:

§ 3.4 Notification of registration.

Upon receipt of an application for registration or renewal thereof, the Commission will, if registration is granted, notify the registrant that he has been registered under the Act, except that with respect to an application for registration of an associated person, the Commission will notify the sponsor.

19. Section 3.10 is proposed to be amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 3.10 Registration of futures commission merchants.

(a) * * *

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) has a current Form 8-R Form 94 on file with

the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

* * * * *

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided,* That the futures commission merchant must notify the Commission within twenty days of the name of such added principal on Form 3–R.

* * * * *

20. Section 3.11 is proposed to be amended by revising paragraph (b) to read as follows:

§ 3.11 Registration of floor brokers.

* * * * *

(b) *Initial registration.* Application for initial registration as a floor broker must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto. Each applicant for initial registration as a floor broker must file his fingerprints with the Form 8–R on a fingerprint card provided by the Commission for that purpose except that a fingerprint card need not be filed by any applicant who: (1) has a current Form 8–R or Form 94 on file with the Commission; or (2) has filed a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

* * * * *

21. Section 3.12 is proposed to be amended by revising paragraphs (a), (b), (c)(1), (c)(3), (c)(4), the introductory paragraph of (d)(1), (d)(1)(i), (d)(1)(ii), (d)(1)(iv), (d)(1)(v), (d)(2), (d)(3), (e), (f), and (g)(1) and by adding paragraph (h) to read as follows:

§ 3.12 Registration of associated persons.

(a) *Registration required.* Except as otherwise provided in Section 4k of the Act or in paragraph (h) of this section, it shall be unlawful for any person to be associated with a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker as an associated person unless that person shall have registered under the Act as an associated person of the sponsor in accordance with the procedures in paragraphs (c) or (d) of this section, except that this section does not preclude any registered associated person who was so registered on July 1, 1982 from continuing to act as such until that person's current registration expires.

(b) *Duration of registration.* A person registered in accordance with paragraph (c) or (d) of this section and whose registration has neither been suspended nor revoked will continue to be so registered until the cessation of the association of the registrant with, or the revocation, suspension, lapse, or withdrawal of the registration of, the associated person's sponsor.

(c) *Application for registration.* Except as otherwise provided in paragraph (d) of this section, application for registration as an associated person must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto.

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship, of such sponsor has signed and dated a certification in writing, stating that:

(i) It is the intention of the sponsor to hire or otherwise employ the applicant as an associated person and that it will do so within thirty days after the receipt of the notification provided in accordance with paragraph (c)(4) of this section and that the applicant will not be permitted to engage in any activity requiring registration as an associated person until the applicant is registered as such in accordance with this section;

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding five years, except that this paragraph (c)(1)(ii) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1982, is associated with the sponsor;

(iii) To the best of the sponsor's knowledge, information, and belief, all of the publicly available information supplied by the applicant on Form 8–R is accurate and complete: *Provided,* That it is unlawful for the sponsor to make the certification required by this paragraph (c)(1)(iii) if the sponsor knew or should have known that any of that information is not accurate and complete; and

(iv) The sponsor has taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in the Form 8–R, or in the records and documents obtained in support of the certifications required by this section.

* * * * *

(3) Each Form 8–R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose, except that this paragraph (c)(3) does not apply to any person who, at the time of the first expiration of that person's registration as an assciated person subsequent to July 1, 1982, is associated with the sponsor as an associated person.

(4) When the Commission determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to the sponsor which has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

(d) *Special registration procedures for certain persons.* (1) Any person whose registration as an associated person in another capacity is still in effect, whose registration as an associated person in the same capacity or in another capacity has terminated within the preceding sixty days, or who, on or prior to the first expiration of that person's registration as an associated person subsequent to July 1, 1982 becomes associated with a sponsor which makes the certification provided by paragraph (d)(1)(i) of this section, will be registered as, and in the capacity of, an associated person of such sponsor upon the mailing by that sponsor to the Commission of written certifications stating:

(i) That such person has been hired or is otherwise employed by that sponsor;

(ii) That such person's registration as an associated person in any capacity is not suspended or revoked;

* * * * *

(iv) Whether there is a pending proceeding under Section 6(b) of the Act or § 3.20 or former § 1.10e to deny, suspend, revoke, or condition such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.20 or former § 1.10e and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

(v) That the sponsor has received a copy of the complaint or letter issued by the Commission if the applicant for registration has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) 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 sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)-(iv) of this section must be signed and dated by the applicant for registration as an associated person.

(3) Within sixty days of mailing the certifications permitted by paragraph (d)(1) of this section, the associated person and the sponsor must complete and the sponsor must file with the Commission a Form 8-R in accordance with the instructions thereto. The Form 8-R must contain the certifications required by paragraphs (c)(1)(ii)-(iv) of this section and must be accompanied by the fingerprint card provided by the Commission or that purpose except that a fingerprint card does not have to be submitted for any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1982, is associated with the sponsor as an associated person.

(e) *Retention of records.* The sponsor must retain in accordance with § 1.31 of this chapter such records as are necessary to support the certifications required by this section.

(f) *Certain dual and multiple associations prohibited.* No person may be simultaneously associated as an associated person with more than one futures commission merchant, or with more than one commodity trading advisor, or with more than one commodity pool operator, or with more than one introducing broker.

(g) *Petitions for exemption.* (1) Any person adversely affected by the operation of this § 3.12 may file a petition with the Secretary of the Commisssion, which petition must set forth with particularity the reasons why that person believes that an applicant should be exempted from the requirements of this section and why such a exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions of the Commission as the Commission may find appropriate.

* * * * *

(h) *Exemption from registration for certain persons.* In addition to the exemptions from registration as an associated person specified in Section 4k of the Act:

(1) An individual registered under the Act as a commodity pool operator need not register as an associated person to be associated with a commodity trading advisor as an associated person;

(2) An individual registered under the Act as a commodity trading advisor need not register as an associated person to be associated with a commodity pool operator as an associated person; and

(3) An individual who is registered with the National Association of Securities Dealers as a registered representative or as a registered principal need not register as an associated person of a commodity pool operator.

22. Section 3.12a-(T) is proposed to be added and, as added, would read as follows:

§ 3.12a-(T) "Transfer" of associated persons; temporary exemption.

Notwithstanding the provisions of § 3.12(a)-(d) and of § 3.31, any associated person of a futures commission merchant who is registered as such on the effective date of this section will be registered as an associated person of a registered commodity trading advisor, as an associated person of a registered commodity pool operator, or as an associated person of a registered introducing broker, if the futures commission merchant and the commodity trading advisor, commodity pool operator, or introducing broker with which the associated person will be associated submit to the Commission, not later than 180 days after the effective date of this section, a statement, signed and dated by the futures commission merchant and by the commodity trading advisor, commodity pool operator, or introducing broker, respectively, specifying:

(a)(1) The name of each such associated person;

(2) The identification number, if any, assigned by the Commission to each such associated person;

(3) The registration expiration date of each such associated person if the associated person was registered as such prior to July 1, 1982 and such registration has not yet expired; and

(b) That the commodity trading advisor, commodity pool operator, or introducing broker acknowledges that—

(1) The associated persons specified in accordance with the requirements of paragraph (a)(1) of this section will, upon the effective date of the transfer of their association to the commodity trading advisor, commodity pool operator, or introducing broker, be registered as associated persons of the commodity trading advisor, commodity pool operator, or introducing broker and will remain registered in such capacity in accordance with the provisions of § 3.12(b) as if the commodity trading advisor, commodity pool operator, or introducing broker had been the sponsor with respect to each of those associated persons; and

(2) It is fully responsible for the conduct of the associated persons specified in accordance with the requirements of paragraph (a)(1) of this section as if those associated persons had been registered in accordance with the procedures specified in § 3.12.

23. Section 3.13 is proposed to be amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 3.13 Registration of commodity trading advisors.

(a) * * *

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) Has a current Form 8-R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

* * * * *

(c) *Addition of principals subsequent to filing of Form 7-R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) Has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided,* That the commodity trading advisor must notify the Commission within twenty days of the name of such added principal on Form 3–R.

24. Section 3.14 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 3.14 Registration of commodity pool operators.

(a) *Initial registration.* (1) Application for initial registration as a commodity pool operator must be on Form 7–R, completed and filed in accordance with the instructions thereto and the provisions of § 4.13(c) of this chapter.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submited or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

* * * * *

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided,* That the commodity pool operator must notify the Commission within twenty days of the name of such added principal on Form 3–R.

25. Section 3.15 is proposed to be added and, as added, would read as follows:

§ 3.15 Registration of introducing brokers.

(a) *Initial registration.* (1) Application for initial registration as an introducing broker must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto and the provisions of § 1.10 of this chapter.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) Has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

(b) *Renewal of registration.* Application for renewal of registration as an introducing broker must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) Has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided,* That the introducing broker must notify the Commission within twenty days of the name of such added principal on Form 3–R.

26. Section 3.21 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15 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 which 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 is 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 Commission of the photocopy; or (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 available 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.

(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:* The applicant for registration; or

(3) *With respect to the fingerprints of a principal:* An officer, if the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker with which the principal will be affiliated is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

27. Section 3.30 is proposed to be revised to read as follows:

§ 3.30 Current address for purpose of service to be filed with the Commission.

The residence 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 of any communications from the Commission, 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 may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker with which the associated person or the applicant for registration is or will be associated as an associated person. Each registrant, while registered, and each principal, while affiliated with a registrant, must keep current the address on the application for registration, biographical supplement, or other address filed with the Commission for the purpose of receiving communications from the Commission. An order of default or other appropriate relief may be entered in any proceeding, including a reparation proceeding commenced while the registrant is registered or within two years thereafter, for failure to file a required response to any communication sent to the latest such address filed with the Commission.

28. Section 3.31 is proposed to be amended by revising paragraphs (a), (b), (c)(1), (c)(2), and (d) and by adding paragraph (e) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Except as is otherwise provided in paragraph (c) of this section, each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Schedules A, B or C of Form 7–R which no longer renders accurate and current the information contained therein. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(b) Each applicant or registrant as a floor broker or associated person and each principal of a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(c)(1) After the filing of a Form 8–R, a Certificate of Special Registration (Form 8-S), or a Form 3-R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, that futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, within ten days after the occurrence of either of the following, file a notice thereof with the Commission indicating: (i) The failure of that person to become associated with the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, and the reasons therefor; or (ii) the termination of the association of the associated person with the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, and the reasons therefor.

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, within ten days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the Commission.

* * * * *

(d) Except as provided in paragraph (e) of this section, each commodity trading advisor and commodity pool operator must promptly file with the Commission a report on Form 3-R, prepared and filed in accordance with the instructions thereto, stating the name of each newly hired or otherwise employed associated person who is already registered as such under the Act in accordance with the procedures set forth in § 3.12 unless the commodity trading advisor or commodity pool operator is the sponsor with respect to that associated person.

(e) Each futures commission merchant, commodity trading advisor, commodity pool operator, and introducing broker must promptly file with the Commission a report on From 3-R, prepared and filed in accordance with the instructions thereto, stating the name of each newly hired or otherwise employed associated person who was registered as such prior to July 1, 1982 unless such associated person is registered in such capacity under the Act as an associated person of the sponsor in accordance with the procedures set forth in § 3.12.

29. Section 3.32 is proposed to be amended by revising paragraph (a) to read as follows. The introductory paragraph of § 3.32 is set out for the convenience of the reader.

§ 3.32 Changes requiring new registration.

A new registration is required in the event of a change:

(a) In the name of the registrant if the registrant is a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker;

* * * * *

30. Section 3.33 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.33 Withdrawal from registration

* * * * *

(c) Where a futures commission merchant or an introducing broker is requesting withdrawal from registration in that capacity and the basis for withdrawal under paragraph (a)(1) of this section is that it has ceased engaging in activities requiring registration, the request for withdrawal must be accompanied by a form 1-FR which contains the information specified in § 1.10 (d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

31. Section 4.14 is proposed to be amended by revising paragraphs (a)(4) and (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

(a) A person is not required to register under the Act as a commodity trading advisor if:

* * * * *

(4) It is registered under the Act as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it has so registered;

(5) It is exempt from registration as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so exempt; or

(6) It is registered under the Act as an introducing broker and it does not (i) direct a client's commodity interest account, or (ii) guide the client's commodity interest trading by means of a systematic program that recommends specific transactions.

* * * * *

32. Section 4.23 is proposed to be amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

* * * * *

33. Section 4.32 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 4.32 Recordkeeping.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

* * * * *

PART 10—RULES OF PRACTICE

Subpart A—General Provisions

34. Section 10.1 is proposed to be amended by revising paragraph (a) to read as follows. The introductory paragraph of § 10.1 is set out for the convenience of the reader.

§ 10.1 Scope and applicability of rules of practice.

These rules of practice are generally applicable to adjudicatory proceedings before the Commodity Futures Trading Commission under the Commodity Exchange Act. These include proceedings for:

(a) Denial, suspension, or revocation of registration in any capacity under the Act pursuant to Sections 6(b) and 8a of the Act, 7 U.S.C. 9, 12a, or denial, suspension, or revocation of designation as a contract market pursuant to sections 6 and 6(a) of the Act, 7 U.S.C. 8;

* * * * *

PART 15—REPORTS—GENERAL PROVISIONS

35. Section 15.00 is proposed to be amended by revising paragraph (f) to read as follows:

§ 15.00 Definitions.

* * * * *

(f) "Customer trading program" means any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise, directly or indirectly controls trading done and positions held by any other person. The term includes, but is not limited to, arrangements where a program participant enters into an expressed or implied agreement not obtained from other customers and makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

* * * * *

36. Section 15.05 is proposed to be amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 15.05 Designation of a futures commission merchant or introducing broker to be the agent of foreign brokers, customers of a foreign broker, and foreign traders.

* * * * *

(b) Any futures commission merchant who makes or causes to be made any futures contract or option contract for the account of any foreign broker or foreign trader, and any introducing broker who introduces such an account to a futures commission merchant, shall thereupon be deemed to be the agent of the foreign broker or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker or the foreign trader with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. In the case of a futures commission merchant who makes or causes to be made any futures or option contract for the account of a foreign broker, the futures commission merchant and the introducing broker, if any, shall also be the agent of the customers of the foreign broker (including any customer who is also a foreign broker and its customers) who have positions in the foreign broker's futures or option contract account carried by the futures commission merchant for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the customer with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. Service or delivery of any communication issued by or on behalf of the Commission to a futures commission merchant or to an introducing broker pursuant to such agency shall constitute valid and effective service or delivery upon the foreign broker, a customer of the foreign broker or the foreign trader.

A futures commission merchant or an introducing broker who has been served with, or to whom there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, a customer of the foreign broker or the foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, a customer of the foreign broker or the foreign trader.

(c) It shall be unlawful for any futures commission merchant and for any introducing broker to open a futures or options contract account for, or to effect transactions in futures contracts or option contracts for an existing account of, a foreign broker or foreign trader unless the futures commission merchant or introducing broker informs the foreign broker or foreign trader prior thereto, in any reasonable manner which the futures commission merchant or introducing broker deems to be appropriate, of the requirements of this section.

(d) The requirements of paragraphs (b) and (c) of this section shall not apply to any account carried by a futures commission merchant or introduced by an introducing broker if the foreign broker, customer of a foreign broker, or foreign trader for whose benefit such account is carried or introduced has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the futures commission merchant and to the introducing broker, if any, prior to the opening of an account, or placing orders for transactions in futures contracts or option contracts of an existing account, with the futures commission merchant or introducing broker. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker and customers of the foreign broker or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, customers of the foreign broker, or foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the futures commission merchant or introducing broker prior to opening an account for the foreign broker or foreign trader or effecting transactions in futures or option contracts for an existing account of a foreign broker or foreign trader. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at 2033 K Street, N.W., Washington, D.C. 20581. A foreign broker, customer of a foreign broker, or foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked or is otherwise no longer in effect. If a futures commission merchant carrying, or an introducing broker introducing, an account for a foreign broker or foreign trader knows or should know that the agreement has expired, has been terminated or is otherwise no longer in effect, the futures commission merchant or introducing broker shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates or is not in effect, the futures commission merchant, introducing broker, and the foreign broker, customers of the foreign broker, or foreign trader are subject to the provisions of paragraphs (b) and (c) of this section.

PART 21—SPECIAL CALLS

37. Section 21.01 is proposed to be revised to read as follows:

§ 21.01 Special calls for information on controlled accounts from futures commission merchants and introducing brokers.

Upon call by the Commission, each futures commission merchant and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in commodity futures on contract markets.

38. Section 21.02 is proposed to be amended by revising the introductory paragraph and paragraphs (a), (b), and (f) to read as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures and/or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a contract market, introducing broker, or foreign broker, and, in addition, for options information, each contract market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures and/or option positions as may be specified in the call:

(a) The name and address of the person for whom each account is introduced or carried;

(b) The principal business or occupation of the person for whom each account is introduced or carried, as specified in the call;

* * * * *

(f) The number of open futures and/or option positions introduced or carried in each account, as specified in the call; and

* * * * *

39. Section 21.03 is proposed to be amended by revising paragraphs (a), (b), (e), (e)(1), (e)(1)(i), (e)(1)(v), and (f) to read as follows:

§ 21.03 Selected special calls—duties of foreign brokers, domestic and foreign traders, futures commission merchants, introducing brokers, and contract markets.

(a) For purposes of this section, the term "accounts of a futures commission merchant or foreign broker" means all open contracts and transactions in futures and options on the records of the futures commission merchant or foreign broker; the term "beneficial interest" means having or sharing in any rights, obligations or financial interest in any futures or options account; the term "customer" means any futures commission merchant, introducing broker, foreign broker, or trader for whom a futures commission merchant makes or causes to be made a futures or options contract. Paragraphs (e), (g) and (h) of this section shall not apply to any futures commission merchant or customer whose books and records are open at all times to inspection in the United States by any representative of the Commission.

(b) It shall be unlawful for a futures commission merchant to open a futures or options account or to effect transactions in futures or options contracts for an existing account, or for an introducing broker to introduce such an account, for any customer for whom the futures commission merchant or introducing broker is required to provide the explanation provided for in § 15.05(c) of this chapter until the futures commission merchant or introducing broker has explained fully to the customer, in any manner the futures commission merchant or introducing broker deems appropriate, the provisions of this section.

* * * * *

(e) The futures commission merchant, introducing broker, or customer to whom the special call is issued must provide to the Commission the information specified below for the commodity, contract market, and delivery months or option expiration dates named in the call. Such information shall be filed at the place and within the time specified by the Commission.

(1) For each account of a futures commission merchant, introducing broker, or foreign broker, including those accounts in the name of the futures commission merchant or foreign broker, on the dates specified in the call issued pursuant to this section, a futures commission merchant, introducing broker, or foreign broker shall provide the Commission with the following information:

(i) The name and address of the person in whose name the account is carried or introduced and, if the person is not an individual, the name of the individual to contact regarding the account;

* * * * *

(v) For the accounts which are not carried for and in the name of another futures commission merchant, introducing broker, or foreign broker, the name and address of any other person who controls the trading of the account, and the name and address of any person who has a ten percent or more beneficial interest in the account.

* * * * *

(f) If the Commission has reason to believe that a futures commission merchant or customer has not responded as required to a call made pursuant to this section, the Commission in writing may inform the contract market specified in the call and that contract market shall prohibit the execution of, and no futures commission merchant, introducing broker, or foreign broker shall accept an order for, trades on the contract market and in the months or expiration dates specified in the call for or on behalf of the futures commission merchant or customer named in the call, unless such trades offset existing open contracts of such futures commission merchant or customer.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

40. Section 145.5 is proposed to be amended by adding paragraph (d)(1)(i)(D) to read as follows:

§ 145.5 Nonpublic matters.

* * * * *

(d) * * *
(1) * * *
(i) * * *

(D) The following portions, and footnote disclosures thereof, of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part IIA, filed pursuant to 17 CFR 1.10(h), if the procedure set forth in 17 CFR 1.10(g) is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement denoted "Exemptive Provision Under [SEC] Rule 15c3-3," the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals which have not been deducted in the computation of Net Capital, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, and the accountant's report on material inadequacies filed under 17 CFR 1.16(c)(5);

* * * * *

PART 147—OPEN COMMISSION MEETINGS

41. Section 147.3 is proposed to be amended by adding paragraph (b)(4)(i)(A)(*4*) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *
(4) * * *
(i) * * *
(A) * * *

(*4*) The following portions and footnotes disclosures thereof, of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part IIA, filed pursuant to 17 CFR 1.10(h), if the procedure set forth in 17 CFR 1.10(g) is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement denoted "Exemptive Provision Under [SEC] Rule 15c3-3," the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals which have not been deducted in the computation of Net Capital, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, and the accountant's report on material inadequacies filed under 17 CFR 1.16(c)(5);

* * * * *

PART 155—TRADING STANDARDS

42. Section 155.1 is proposed to be revised to read as follows:

§ 155.1 Definitions.

For purposes of this part, the term "affiliated person" of a futures commission merchant or of an introducing broker means any general partner, officer, director, owner of more than ten percent of the equity interest, associated person or employee of the futures commission merchant or of the introducing broker, and any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

43. Section 155.3 is proposed to be amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 155.3 Trading standards for futures commission merchants.

* * * * *

(c) No futures commission merchant shall knowingly handle the account of an affiliated person of another futures commission merchant or of an introducing broker unless the futures commission merchant:

(1) Receives written authorization from a person designated by such other futures commission merchant or introducing broker with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section or § 155.4(a)(2), respectively;

* * * * *

(3) Transmits on a regular basis to such other futures commission merchant or introducing broker copies of all statements for such account and pursuant to paragraph (c)(2) of this section.

* * * * *

44. 17 CFR part 155 is proposed to be further amended by adding a new § 155.4 to read as follows:

§ 155.4 Trading standards for introducing brokers.

(a) Each introducing broker shall, at a minimum, establish and enforce internal rules, procedures and controls to:

(1) Insure, to the extent possible, that each order received from a customer or from an option customer which is executable at or near the market price is transmitted to the futures commission merchant carrying the account of the customer or option customer before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's or option customer's order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in

which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

(2) Prevent affiliated persons from placing orders, directly or indirectly, with any futures commission merchant in a manner designed to circumvent the provisions of paragraph (a)(1) of this section.

(b) No introducing broker or any of its affiliated persons shall:

(1) Disclose that an order of another person is being held by the introducing broker or any of its affiliated persons, unless such disclosure is necessary to the effective execution of such order or is made at the request of an authorized representative of the Commission, the contract market on which such order is to be executed, or a futures association registered with the Commission pursuant to Section 17 of the Act; or

(2) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the introducing broker or any of its affiliated persons by reason of their relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by the Commission.

(c) No affiliated person of an introducing broker shall have an account, directly or indirectly, with any futures commission merchant unless:

(1) Such affiliated person receives written authorization to maintain such an account from a person designated by the introducing broker with which such person is affiliated with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section; and

(2) Copies of all statements for such account and of all written records prepared by such futures commission merchant upon receipt of orders for such account pursuant to § 155.3(c)(2) are transmitted on a regular basis to the introducing broker with which such person is affiliated.

PART 166—CUSTOMER PROTECTION RULES

45. Section 166.2 is proposed to be revised to read as follows:

§ 166.2 Authorization to trade.

No futures commission merchant, introducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account—

(a) Specifically authorized the futures commission merchant, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the customer or person designed by the customer to control the account specifies (1) the precise commodity interest to be purchased or sold and (2) the exact amount of the commodity interest to be purchased or sold); or

(b) Authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization.

PART 170—REGISTERED FUTURES ASSOCIATIONS

46. The authority citation for Part 170 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 6p, 12a, and 21.

Subpart A—Standards Governing Commission Review of Applications for Registration as a Futures Association Under Section 17 of the Act

47. Section 170.2 is proposed to be revised to read as follows:

§ 170.2 Membership restrictions (Section 17(b)(2) of the Act).

If it appears to the Commission to be necessary or appropriate in the public interest and to carry out the purposes of Section 17 of the Act, a futures association may restrict its membership to individuals registered by the Commission in a particular capacity or to individuals doing business in a particular geographical region or to firms having a particular level of capital assets or which engage in a specified amount of business per year.

48. Section 170.10 is proposed to be added, and as added, would read as follows:

§ 170.10 Proficiency examinations (Sections 4p and 17(p) of the Act).

A futures association may prescribe different training standards and proficiency examinations for persons registered in more than one capacity: *Provided,* That nothing contained in the Act or these regulations, including any exemption from registration for persons registered in another capacity, shall be deemed to preclude the establishment of training standards and a proficiency examination requirement for functions performed in such other capacity.

Issued in Washington, D.C. on March 29, 1983, by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 83-8574 filed 4-5-83; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 11

[Docket No. RM83-10-000]

Annual Charges Policy Group

Issued March 31, 1983.

AGENCY: Federal Energy Regulatory Commission

ACTION: Order granting petition for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) grants the petition of the Annual Charges Policy Group (ACPG) to institute a rulemaking for the determination and assessment of annual charges for non-Federal hydroelectric power projects at Government dams. By action taken on March 30, 1983, the Commission has authorized the issuance of a Notice of Proposed Rulemaking on that subject (Docket No. RM83-13-000). The action requested by ACPG has, therefore, been taken and their petition for rulemaking granted.

FOR FURTHER INFORMATION CONTACT: Fredric D. Chanania, Deputy Assistant General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On December 13, 1982, the Annual Charges Policy Group (ACPG) filed with the Commission a petition for rulemaking [1] seeking the institution of rulemaking procedures for the determination and assessment of annual charges for non-Federal hydroelectric power projects at Government dams. By action taken on March 30, 1983, the Commission has authorized the issuance of a Notice of Proposed Rulemaking on that subject (Docket No. RM83-13-000). Accordingly, the request for action in the ACPG petition had been satisfied.

Therefore, the Commission orders:

That the petition for rulemaking submitted by the Annual Charges Policy Group is hereby granted.

[1] The petition is styled "Petition of Annual Charges Policy Group to Institute Formal Rulemaking Proceedings."