(d) The transmitter output power of the control station must be adjusted (see § 95.135) so that the signal strength produced at the terminals of the feedline to the antenna of the remotely controlled station is no more than 6 decibels more than that produced by the unit of the mobile station. The maximum transmitter output power permitted any GMRS station must not be exceeded (see § 95.141).

(e) A record must be made of each control station power test and kept as part of the GMRS system records.

Appendix B—Where the Large Urban Areas Are Located.

City	North Latitude	West Longitude
	° ′ ″	° ′ ″
Akron, Ohio	41 05 00	81 30 44
Albany, Schenectady, and Troy, N.Y.	42 39 01	73 45 01
Albuquerque, N. Mexico	35 05 01	106 39 05
Allentown-Bethlehem-Easton Pa.-N.J.	40 36 11	75 28 06
Ann Arbor, Mich	42 16 59	83 44 52
Atlanta, Ga	33 45 10	84 23 37
Augusta, Ga.-S.C.	33 28 20	81 58 00
Austin, Tex	30 16 09	97 44 37
Bakersfield, Calif.	35 22 31	119 01 16
Baltimore, Md	39 17 26	76 36 45
Baton Rouge, La	30 26 58	91 11 00
Birmingham, Ala	33 31 01	86 48 36
Boston, Mass	42 21 24	71 03 25
Bridgeport, Conn	41 10 49	73 11 22
Buffalo, N.Y.	42 52 52	78 52 21
Canton, Ohio	40 47 50	81 22 37
Charleston, S.C.	32 46 35	79 55 53
Charlotte, N.C.	35 13 44	80 50 45
Chattanooga, Tenn.-Ga	35 02 41	85 18 32
Chicago, Ill.-Northwestern Ind	41 52 28	87 38 22
Cincinnati, Ohio-Ky	39 06 07	84 30 35
Cleveland, Ohio	41 29 51	81 41 50
Colorado Springs, Colo	38 50 07	104 49 16
Columbia, S.C.	34 00 02	81 02 00
Columbus, Ga.-Ala	32 28 07	84 59 24
Columbus, Ohio	39 57 47	83 00 17
Corpus Christi, Tex	27 47 51	97 23 45
Dallas-Fort Worth, Tex	32 47 09	96 47 37
Davenport-Rock Island-Moline, Iowa-Ill.	41 31 00	90 35 00
Dayton, Ohio	39 45 32	84 11 43
Denver, Colo	39 44 58	104 59 22
Des Moines, Iowa	41 35 14	93 37 00
Detroit, Mich	42 19 48	83 02 57
El Paso, Tex	31 45 36	106 29 11
Fayetteville, N.C.	35 03 00	78 53 00
Flint, Mich	43 00 50	83 41 33
Fort Lauderdale-Hollywood, Fla	26 07 00	80 09 00
Fort Wayne, Ind	41 04 21	85 08 26
Fresno, Calif.	36 44 12	119 47 11
Grand Rapids, Mich	42 58 03	85 40 13
Greenville, S.C.	34 50 50	82 24 01
Harrisburg, Pa	40 15 43	76 52 59
Hartford, Conn	41 46 12	72 40 49
Honolulu, Hawaii	21 19 00	157 52 00
Houston, Tex	29 45 26	95 21 37
Indianapolis, Ind	39 46 07	86 09 46
Jackson, Miss	32 17 56	90 11 06
Jacksonville, Fla	30 19 44	81 39 42
Kansas City, Mo.-Kans	39 04 56	94 35 20
Knoxville, Tenn	35 57 39	83 55 07
Lansing, Mich	42 44 01	84 33 15
Las Vegas Nev	36 10 20	115 08 37
Lawrence-Haverhill, Mass.-N.H	42 42 16	71 10 06
Little Rock-North Little Rock, Ark	34 44 42	92 16 37
Lorain-Elyria, Ohio	41 28 00	82 11 00
Los Angeles-Long Beach, Calif.	34 03 15	118 14 28
Louisville, Ky.-Ind	38 14 47	85 45 49
Madison, Wis	43 04 23	89 22 55
Melbourne-Cocoa, Fla	28 05 00	80 36 00
Memphis, Tenn.-Ark.-Miss	35 08 46	90 03 13
Miami, Fla	25 46 37	80 11 32
Milwaukee, Wis	43 02 19	87 54 15
Minneapolis-St. Paul, Minn	44 58 57	93 15 43
Mobile, Ala	30 41 36	88 02 33
Nashville-Davidson, Tenn	36 09 33	86 46 55
New Haven, Conn	41 18 25	72 55 30
New Orleans, La	29 56 53	90 04 10
Newport News-Hampton, Va	36 59 30	76 26 00
New York, N.Y.-Northerstern New Jersey	40 45 06	73 59 39
Norfolk-Portsmouth, Va	36 51 10	76 17 21
Ogden, Utah	41 13 31	111 58 21
Oklahoma City, Okla	35 28 26	97 31 04
Omaha, Nebr.-Iowa	41 15 42	95 56 14
Orlando, Fla	28 32 42	81 22 38
Oxnard-Ventura-Thousand Oaks, Calif.	34 12 00	119 11 00
Pensacola, Fla	30 24 51	87 12 56
Peoria, Ill.	40 41 42	89 35 33
Philadelphia, Pa.-N.J	39 56 58	75 09 21
Phoenix, Ariz	33 27 12	112 04 28
Pittsburgh, Pa	40 26 19	80 00 00
Portland, Oreg.-Wash	45 31 06	122 40 35
Providence-Pawtucket-Warwick, R.I.-Mass	41 49 32	71 24 41
Raleigh, N.C.	35 46 38	78 38 21
Richmond, Va	37 32 15	77 26 09
Rochester, NY	43 09 41	77 36 21
Rockford, Ill.	42 16 07	89 05 46
Sacramento, Calif.	38 34 57	121 29 41
St. Louis, Mo.-Ill.	38 37 45	90 12 22
St. Petersburg, Fla	27 46 18	82 38 19
Salt Lake City, Utah	40 45 23	111 53 26
San Antonio, Tex	29 25 37	98 29 06
San Bernardino-Riverside, Calif.	34 06 30	117 17 28
San Diego, Calif.	32 42 53	117 09 21
San Francisco-Oakland, Calif.	37 46 39	122 24 40
San Jose, Calif.	37 20 16	121 53 24
Sarasota-Bradenton, Fla	27 20 05	82 32 20
Scranton-Wilkes-Barre Pa	41 24 32	75 39 46
Seattle-Everett, Wash	47 36 32	122 20 12
Shreveport, La	32 30 46	93 44 56
South Bend, Ind.-Mich	41 40 33	86 15 01
Spokane, Wash	47 39 32	117 25 33
Springfield-Chicopee-Holyoke, Mass.-Conn	42 06 21	72 35 32
Syracuse, N.Y.	43 03 04	76 09 14
Tacoma, Wash	47 14 59	122 26 15
Tampa, Fla	27 56 58	82 27 25
Toledo, Ohio-Mich	41 39 14	83 32 39
Trenton, N.J.-Pa	40 13 30	74 45 00
Tucson, Ariz	32 13 15	110 58 06
Tulsa, Okla	36 09 12	95 59 34
Washington, DC-Md.-Va	38 53 51	77 00 33
West Palm Beach, Fla	26 42 36	80 03 07
Wichita, Kans	37 41 30	97 20 16
Wilmington, Del.-N.J.-Md	39 44 46	75 32 51
Worcester, Mass	42 15 37	71 48 17
Youngstown,-Warren, Ohio	41 05 57	80 39 02
San Juan, P.R.	18 28 00	66 07 00

Note 1.—This Appendix lists the urbanized areas of 200,000 or more people as shown in the Bureau of Census News Release of July 27 1981: "Provisional Population of Urbanized Areas, 1980." The geographical coordinates given are from the Department of Commerce publication of 1947: "Air-Line Distances Between Cities in the United States" and from data supplied by the National Geodetic Survey. The coordinates are determined by using the first city mentioned in the urbanized area as the center of the urbanized area.

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federal register

Wednesday
August 3, 1983

Part III

Commodity Futures Trading Commission

Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Final Rules on Registration and Other Regulatory Requirements and Notice of Qualification for "No-Action" Position Regarding Introducing Brokers

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 10, 15, 17, 18, 21, 33, 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: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted rules which establish registration requirements and procedures for introducing brokers and the associated persons ("APs") of introducing brokers, commodity trading advisors, and commodity pool operators. These rules, which implement pertinent portions of the Futures Trading Act of 1982, also establish minimum financial, reporting, and recordkeeping requirements for introducing brokers, create numerous exemptions from registration, establish limitations on the ability of APs to be simultaneously associated with different sponsors, and set forth a framework for participation in the Commission's option pilot program by introducing brokers.

The Commission has adopted a minimum adjusted net capital requirement of $20,000 for introducing brokers, as well as an alternative capital requirement for introducing brokers which have entered into a "guarantee agreement" with a futures commission merchant ("FCM") which will allow those introducing brokers to operate without raising their own capital. The Commission has also exempted introducing brokers from a portion of the Commission's financial "early warning" system so that those introducing brokers who are not operating pursuant to a guarantee agreement will not be required to file a notice and monthly financial reports when their capital level falls below 150 percent of the $20,000 minimum.

The final rules now being adopted by the Commission will exclude virtually all commodity trading advisors ("CTAs") and commodity pool operators ("CPOs") from the definition of introducing broker; as a result, most CTAs and CPOs will not be required to register as introducing brokers. In addition, introducing brokers will be exempt from registration as commodity trading advisors if their advisory activities are solely in connection with their business as introducing brokers. Furthermore, APs generally will be permitted to be simultaneously associated with more than one CTA or CPO under certain circumstances. The rules do, however, restrict the ability of an AP to be simultaneously associated with an FCM and with an introducing broker and similarly restrict the association of an AP with both an FCM or introducing broker and with a CTA or CPO.

In a **Federal Register** notice which is being separately published, the Commission has announced that it has revised the fees it charges for all categories of registrant and has established fees for the APs of CTAs and CPOs. The fees for introducing brokers and the associated persons of introducing brokers will be established by the National Futures Association.

EFFECTIVE DATE: August 3, 1983.

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

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Futures Trading Act of 1982 [1] amended the Commodity Exchange Act ("Act") to require, *inter alia*, the registration of introducing brokers and the associated persons of introducing brokers, commodity trading advisors and commodity pool operators. On April 6, 1983, the Commission proposed rules and rule amendments to establish registration requirements and procedures for these new categories of registrant, prescribe minimum financial, reporting, and recordkeeping requirements for introducing brokers, create certain exemptions from registration, increase the fees charged for registration with the Commission, and specify appropriate regulatory responsibilities for these new categories of registrant. 48 FR 14933.

In particular, the Commission proposed to extend to all categories of associated persons the AP "sponsorship" and fingerprinting requirements that had previously been established for APs of futures commission merchants. While the Commission's proposal would have established certain exemptions from AP registration, it also would have prohibited an AP from being simultaneously associated with more than one FCM, more than one introducing broker, more than one CTA, or more than one CPO. In addition, the Commission proposed to require any person (other than an FCM, a floor broker, or an AP of an FCM or introducing broker) who was compensated on a per-trade basis or for the referral of customers to register as an introducing broker. The Commission's proposal would have further specified that an introducing broker that either directed or guided a client's commodity interest account must register as a commodity trading advisor. The Commission acknowledged that its proposal would, if adopted, cause many persons who had been operating as "agents" of FCMs to register not only as introducing brokers but also as CTAs and, in addition, would require some CTAs either to change the manner in which they were compensated or to register as introducing brokers. The Commission explained, however, that it believed that each of these proposals was fully consistent with the intent of Congress and the Commission's interpretation of the requirements of the Act. 48 FR at 14933-36.

In accordance with the Commission's mandate to establish such financial standards for introducing brokers as are necessary "to guarantee [the] accountability and responsible conduct" of introducing brokers,[2] the Commission proposed to establish a minimum adjusted net capital requirement for introducing brokers of $25,000 (or $50,000, where the introducing broker is not a member of a designated self-regulatory organization such as NFA). The Commission further proposed to include introducing brokers in the Commission's "early warning" system, so that an introducing broker whose capital was less than 150 percent of the minimum required amount (*i.e.*, $37,500 or $75,000, respectively) would have to file a notice at that time and thereafter file monthly unaudited financial statements until three successive months had elapsed during which the firm's adjusted net capital at all times equaled or exceeded the 150 percent level.

Over 100 persons commented on these items and on other aspects of the Commission's proposal. The commentators included the National Futures Association ("NFA"), industry trade associations, contract markets, FCMs, CTAs, CPOs, law firms, and

[1] Pub. L. No. 97-444, 96 Stat. 2294 (January 11, 1983).

[2] S. Rep No. 384, 97th Cong., 2d Sess. 41 (1982).

persons who identified themselves as "agents" of FCMs. The Commission has carefully reviewed each of those comments and, based upon that review and its careful reconsideration of its proposal, is now adopting rules which it believes are not only responsive to the concerns of the commentators but are also fully consistent with the Commission's regulatory objectives in this rulemaking proceeding.

Shortly after the proposed rules were published in the Federal Register, the Commission transmitted to all registered FCMs a letter in which they were advised that in view of the effective date of the requirements for the registration of introducing brokers and the APs of introducing brokers created by the Futures Trading Act of 1982,[3] each FCM and agent of an FCM must determine whether those agents and their associated persons were to continue in business as introducing brokers and APs of introducing brokers or, alternatively, as APs of an FCM on and after May 11, 1983. 48 FR 15890 (April 13, 1983). That letter, which established procedures by which approximately 650 agents of FCMs and 4,500 APs have obtained a "no-action" position from the Commission with respect to those registration requirements, also instructed agents to submit their applications and related documentation to the NFA which, the Commission explained, had been authorized to process these materials on behalf of the Commission.[4] Finally, applicants for the Commission's "no-action" position were advised that they would have up to ninety days after the Commission adopted minimum financial requirements for introducing brokers to demonstrate their compliance with those requirements.

The Commission adopted a similar "no-action" position for the APs of CTAs and CPOs. 48 FR 16879 (April 20, 1983). As with the introducing broker "no-action" position, CTAs, and CPOs were required to submit a Certification in which they represented that they would be fully responsible for the conduct of their APs as though each such individual had been registered as an associated person of the sponsoring CTA or CPO in accordance with the Commission's registration regulations.

B. Summary of the Final Rules

The rules which the Commission is now adopting reflect the Commission's evaluation of the comments, its experience in the administration of the above-described "no-action" positions, and the Commission's further evaluation of its regulatory objectives in this rulemaking proceeding. The Commission has carefully weighed the concerns expressed by the commentators and, where possible, has modified its rule proposal to eliminate unnecessary regulatory burdens and any potential impediments to competition and to provide these new registrants with various options for the conduct of their businesses and with "substantial flexibility as to the manner and classification of registration."[5] The Commission is nevertheless mindful of its paramount obligation, which is to assure, to the extent reasonably possible, the fitness of every registrant.

Financial Requirements. As noted above, the Commission proposed to require introducing brokers to maintain a minimum adjusted net capital level of at least $25,000. Although some of the commentators supported the Commission's proposal, the preponderance of the commentators maintained that such a requirement, when read in conjunction with the proposed "early warning" requirements (and, as some of these commentators further noted, the total exclusion of an introducing broker's security or guarantee deposit with an FCM from the introducing broker's computation of net capital), would make introducing broker's continued operation considerably more difficult. Some of these commentators suggested that the Commission instead allow an introducing broker to operate without any fixed dollar amount of net capital if its obligations were guaranteed by a futures commission merchant.

As described in greater detail below, the Commission has reduced the minimum net capital requirement for introducing brokers to $20,000 and has eliminated that portion of the proposed "early warning" requirement for introducing brokers whereby an introducing broker whose capital was less than 150 percent of the minimum would have had to file monthly financial reports. Taken together, these changes effectively reduce the required capital level for introducing brokers by nearly 45 percent. The Commission has also determined to allow introducing brokers to credit towards their capital 50 percent of the value of the guarantee or security deposits which they maintain with an FCM which carries accounts for the introducing broker's customers.

Furthermore, and at the suggestion of some of the commentators, the Commission has adopted a rule which will allow any introducing broker which is a party to a "guarantee agreement" (as defined in § 1.3(nn) and reprinted at the end of this Federal Register notice) to satisfy its capital requirement solely by entering into such an agreement. In essence, the guarantee agreement provides that the FCM which is a party to the agreement will guarantee performance by the introducing broker of its obligations under the Act and the rules, regulations, and order thereunder. As such, the guarantee agreement is an alternative means for an introducing broker to satisfy the Commission's standards of financial responsibility for its activities as an introducing broker.

Confusion Concerning "Monthly Audits". An introducing broker which is not operating pursuant to a guarantee agreement will have to submit a certified financial report with its application for registration and, once registered, a certified year-end financial report. (These requirements are the same as those applicable to FCMs.) Introducing brokers who are operating pursuant to a guarantee agreement will not need to file annual certified or quarterly unaudited financial reports. Special provisions have also been made for those introducing brokers which are country elevators. Monthly audits were not proposed for introducing brokers; in addition, no monthly financial reports of any kind will be required for any introducing broker because the financial "early-warning" provision relating to a "non-guaranteed" introducing broker's capital which falls below 150 percent of the $20,000 minimum is being omitted.

Request for Short Form 1-FR. Introducing brokers using the alternative capital requirement will only need to complete the guarantee agreement. Furthermore, completion of the Form 1-FR has been simplified for "non-guaranteed" introducing brokers as a result of the limitation on the carrying of noncustomer accounts. Even though FCMs and introducing brokers will use the same Form 1-FR, those items not applicable to introducing brokers have been clearly identified.

Introducing Broker Definition. The commentators generally maintained that the introducing broker definition (*see* proposed § 1.57) was to broad. The Commission is excluding from that definition FCMs, floor brokers, APs (including exempt APs), CTAs which solely manage discretionary accounts or which do *not* receive per-trade compensation, and CPOs which solely operate commodity pools (§ 1.3 (mm)).

[3] Pub. L. No. 97-444, section 207, 208, 212, 96 Stat. 2302, 2303-04 (*amending* 7 U.S.C. 6d, 6f, 6k).

[4] 48 FR 15940 (April 13, 1983); *see* Section 8a(10) of the Act (7 U.S.C. 12a(10)). Pub L. No. 97-444, section 224(6), 96 Stat. 2315.

[5] H.R. Rep. No. 964, 97th Cong., 2d Sess. 41 (1982) (Conference Committee).

Flexibility and Time to Transfer in Accordance with Final Rules. The Commission is adopting a temporary regulation (§ 3.12a–(T)) allowing an AP one "free transfer" to a different registration category (to or from an FCM or introducing broker) within six months of the date of adoption of the final rule; deferring for 90 days the effective date of the capital requirement for introducing brokers operating pursuant to the Commission's "no-action" position; providing those persons who formerly operated as agents several alternatives (*i.e.*, branch office, AP, introducing broker with minimum capital requirement, and introducing broker with alternative capital requirement); and allowing those persons who did not qualify for the Commission's introducing broker "no-action" position and who now must register as introducing brokers because of the form in which they are compensated until October 31, 1983 in which to apply for registration. All of these provisions are intended to permit affected individuals and firms adequate time in which to determine the most suitable method of operation.

Multiple Associations. Some commentators supported the Commission's proposal (which would have prohibited an individual from being associated with more than one sponsor in each category of registration) because of concerns relating to identifying each firm's responsibility for an AP and potential conflicts of interest. Most of the other commentators, however, objected to the Commission's proposal, particularly because it would have created certain practical problems with respect to the APs of CPOs and CTAs. The Commission has developed several rules to address the commentators' concerns:

(a) An AP may not be simultaneously associated with more than one FCM or introducing broker (§ 3.12(f));

(b) An AP may not be simultaneously associated with both an FCM and with an introducing broker (§ 3.12(f));

(c) An AP of an FCM or introducing broker may not register as an AP of a CPO or CTA if that FCM or introducing broker carriers or introduces the discretionary or pool account which has been solicited or accepted by that AP (§ 3.12(f));

(d) An individual soliciting pool participants for a pool with more than one general partner would, absent an exemption, necessarily be associated with more than one CPO, which would have been prohibited by proposed § 3.12(f). An exception has now been provided for this situation (§ 3.16(a)(6)); and

(e) An AP may be simultaneously associated with more than one CPO or CTA subject to other rules, including sponsorship, the assumption of joint and several liability by the CPOs and/or CTAs for common customers, and the periodic fingerprinting of all APs of CTAs and CPOs with multiple associations (§ 3.16(e)).

Registration Fees. Fees (which are now the subject of a separate Federal Register notice) have been adjusted to reflect actual costs to the Commission. The Commission is not adopting a fee for principals. Furthermore, there will be no additional fee for simultaneous applications for registration as an AP in more than one capacity or for multiple AP associations reported on Form 3–R. Fees for introducing brokers and the APs of introducing brokers will be established by the National Futures Association.

Options. The final rules provide that it is unlawful for any person to solicit or accept orders for a commodity option transaction, or to supervise any person so engaged, unless such person is (1) an FCM which is either a member of the exchange on which the option is traded or a member of a self-regulatory organization (such as NFA) which regulates the option-related activities of its FCM members pursuant to Commission-approved rules; (2) an introducing broker which is either a member of self-regulatory organization which regulates the option-related activities of its introducing broker members pursuant to Commission-approved rules or is operating pursuant to a guarantee agreement with an FCM, and that FCM is a member of a self-regulatory organization which regulates the option-related activities of the introducing broker in a manner equivalent to that required of contract markets with respect to their member FCMs; or (3) an AP of an FCM or introducing broker which meets the above requirements.

II. Registration

A. Introducing Brokers

The Commission's proposal generally would have required those persons who were compensated on a per-trade basis or for the referral of customers to an FCM to register under the Act as an introducing broker. The Commission stated that its proposal was "intended to effectuate the Congressional intent that persons who were formerly agents [of FCMs] must now register as introducing brokers or as associated persons of a futures commission merchant."[6] The Commission explained that:

> The legislative history of the Futures Trading Act of 1982 makes clear that Congress intended to eliminate 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. 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. . . . Generally, the agent was compensated by the FCM on a per-trade basis—*i.e.*, the agent would in some manner be allocated to 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 . . . The Commission is further proposing . . . 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 of acceptance of their orders for referral to an FCM for the institution of a trading relationship and the execution of those orders. 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 rquire 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.[7]

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[6] 48 FR 14933, 14935 (April 6, 1983).

[7] *Id.* at 14935–36 (footnotes omitted).

Although the Commission's proposal to define the persons who must register as introducing brokers received some support, the majority of the commentators who addressed the issue opposed that definition on the grounds that it would impose unnecessary requirements on CTAs and CPOs. Specifically, those commentators noted that requiring the re-registration of a CTA or CPO as an introducing broker would have the effect of duplicating the fitness checks that were made when the CTA or CPO was first registered with the Commission. These commentators further noted that the Commission's rules already require CPOs or CTAs to disclose the form and manner of compensation to prospective pool participants and clients[8] and to disclose any conflicts of interest that might arise between a CPO or CTA and an introducing broker.[9] Finally, the commentators suggested that inasmuch as the Commission's proposal would have the effect of establishing a capital requirement for certain CTAs and CPOs (but not those CTAs and CPOs which receive incentive or performance compensation), the Commission should separately propose such a rule for all trading advisors and pool operators pursuant to the authority contained in Section 4n of the Act (7 U.S.C. 6n) if it believed such a requirement to be necessary.

The Commission has carefully considered these comments and has reconsidered its objectives in light of those comments. The Commission's proposal, which was consistent with earlier staff interpretations of pertinent provisions of the Act, was intended primarily to preclude those persons who were formerly designated as agents of FCMs and who would now be required to register as introducing brokers from circumventing the newly-established statutory and regulatory requirements (including the proposed net capital requirement) by registering in some other capacity.[10] The Commission believes, however, that its objectives can be as well met by revising the final rules to eliminate the form and manner of compensation as the principal measure of whether registration as an introducing broker would be required. Thus, the Commission has decided to exclude from the definition of introducing broker any CTA which, acting in its capacity as a trading advisor, either manages discretionary accounts pursuant to a power of attorney *or* which is not compensated on a per-trade basis. The definition of introducing broker would similarly exclude any CPO which, acting in its capacity as a pool operator, solely operates commodity pools. Finally, the Commission's proposal would have exempted FCMs, floor brokers, and APs of FCMs and introducing brokers from registration as an introducing broker (proposed § 1.57(b)); these persons, as well as the APs of CTAs and CPOs, are now explicitly excluded from the definition of "introducing broker" if they are acting in their capacities as FCMs, floor brokers, or APs. Section 1.3(mm).

As a result of these exemptions, an AP who, acting in his capacity as an AP, solicits or accepts customers' or option customers' orders, or who solicits or accepts discretionary accounts or pool participations, would not be required to register as an introducing broker. Similarly, a commodity trading advisor which "guides" its clients' accounts by means of a systematic program that recommends specific transactions[11] and which is compensated other than on a per-trade basis (as, for example, by an incentive or a fixed monthly fee) would not be required to register as an introducing broker. These exclusions from the definition of "introducing broker" are, however, limited to the activities specified therein. Thus, for example, while a commodity pool operator which only operated commodity pools would not be required to register as an introducing broker, under these rules that same commodity pool operator would not be authorized to solicit or accept orders for an FCM unless it were also registered as an introducing broker or, in the case of an individual, as an AP of that FCM.

Some of the commentators noted that the definition of introducing broker should also exclude those persons who solicit or accept orders in a clerical capacity or who refer customers on an occasional basis and without compensation. The Commission believes that each of these suggestions has merit and has modified the definition of introducing broker to exclude those persons whose solicitation or acceptance of customer' or option customers' orders is solely clerical[12] or who are not compensated, directly or indirectly,[13] for their activities as an introducing broker.

The Commission's staff has received a number of informal inquiries as to whether a person who receives "split" commissions or a referral fee must, in all instances, be registered as an introducing broker. The Commission has previously given notice that if it were to adopt such a rule, it would provide affected persons who did not qualify for the Commission's April 7, 1983 "no-action" position for introducing brokers[14] adequate time in which to comply with that requirement.[15] As indicated above, a number of these persons will be excluded from the definition of introducing broker and will not, therefore, be required to register as such; others, such as those individuals who are registered in certain specified capacities with the National Association of Securities Dealers, may be exempt from registration in appropriate cases.[16] To provide the persons now covered by the amended definition adequate time in which to register, the Commission will not take any action to enforce the registration requirements with respect to any person who must now register under these rules as an introducing broker and who: (1) Is already registered with the Commission in some other capacity, and (2) files a completed application for registration as an introducing broker (including the form 1–FR, Part A (net capital computation) or Part B (guarantee agreement)) with the NFA not later October 31, 1983, which is

[8] *See* Commission rules 4.21(a)(7), 4.21(a)(14), 4.31(a)(4) (17 CFR 4.21(a)(7), 4.21(a)(14), 4.31(a)(4)).

[9] See Commission rules 4.21(a)(3) and 4.31(a)(5) (17 CFR 4.21(a)(3), 4.31(a)(5)). The Commission has nonetheless amended those rules explicitly to require the disclosure of any such conflicts.

[10] The Commission was particularly concerned that such an agent could register as a CTA and thereby evade the requirements that would otherwise be applicable to an introducing broker. Although, as discussed below, the Commission has modified its proposal in this regard, the Commission has directed its staff to scrutinize closely the manner and method by which such CTAs conduct business to ensure that they are not, in fact, "engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery" or for any commodity option traded on or subject to the rules of a contract market and are not, therefore, required to register as an introducing broker. *See* § 1.3(mm).

[11] *See* Commission rule 4.10(g)(2) (17 CFR 4.10(g)(2)).

[12] The Commission anticipates that the standards previously articulated in staff interpretations of the clerical capacity exception contained in Section 4k(1) of the Act would generally be applicable to this exclusion from the definition of introducing broker. *See, e.g.*, Interpretive Letter No. 76–18, Comm. Fut. L. Rep. (CCH) ¶20,210; Interpretive Letter No. 77–6, Comm. Fut. L. Rep. (CCH) ¶20,430; F. White & E. Lyon, *Report for the Commodity Futures Trading Commission: Questions Concerning the Registration of Associated Persons* (Projecter ±204), at 9–12 (April 10, 1975).

[13] Indirect compensation could include, among other items, forms of "soft" compensation such as research.

[14] 48 FR 15890 (April 13, 1983).

[15] 48 FR 19362, 19383 (April 29, 1983).

[16] *See* §§ 3.12(h)(2), 3.16(a)(5). An exemption from AP registration does not, in itself, exclude an individual from the definition of "introducing broker." As already discussed, however, the definition of introducing broker does not include many of the persons who would have been required to register as an introducing broker under proposed § 1.57(b).

ninety days after the adoption of these regulations. This latter "no-action" position will terminate upon the registration of that person as an introducing broker or upon notice from the Commission's Division of Trading and Markets or from the National Futures Association that the "no-action" position has been terminated.

The Commission also proposed to limit the exemption from CTA registration for introducing brokers to those introducing brokers which neither directed not guided clients' commodity interest accounts. Proposed § 4.14(a)(6). The Commission explained that its proposal was consistent with the recent amendments to the Act which, absent a regulatory exemption, would have required most introducing brokers to register as CTAs,[17] even in those cases "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."[18]

Those persons who commented on this portion of the Commission's proposal suggested that the Commission instead adopt a rule which would conform the regulatory structure for introducing brokers and their APs to that which is applicable to FCMs and their associated persons. In particular, the commentators noted that under the Commission's proposal, an introducing broker who formerly engaged in business as an agent of an FCM and who may not have been required to furnish the Disclosure Document or maintain the records specified in Commission rules 4.31 and 4.32 (17 CFR 4.31, 4.32) would now be required immediately to compile a composite "track record" of all customer accounts which had been directed by the agent during the preceding three years.[19] These commentators further noted that it was not uncommon for those agents to have employed APs who were individually registered as CTAs or to have purchased research reports from independent CTAs or from their clearing FCM which were then distributed to the agent's customers and that it would be extremely difficult to appropriately disclose past performance in such cases.

The commentators accordingly suggested that the Commission provide an exemption from CTA registration if the advisory activities of an introducing broker are "solely incidental" to the introducing broker's business. Such an exemption would be comparable to the exclusion of FCMs from the definition of "commodity trading advisor" contained in Section 2(a) of the Act. The Commission agrees in principle with these commentators and has adopted an exemption from CTA registration for any registered introducing broker whose "trading advice is [issued] solely in connection with its business as an introducing broker." Section 4.14(a)(6).[20] This exemption from registration parallels the already-existing exemption from CTA registration for associated persons (§ 4.14(a)(3))[21] and, the Commission believes, more precisely delineates the intended scope of this exemption than does the somewhat broader "solely incidental" exemption suggested by the commentators. The Commission will, however, monitor the use of these new registration categories and, if it determines that CTAs are registering as introducing brokers to avoid their disclosure obligations, the Commission will take appropriate measures to remedy any problems that may result from such a practice.

The Commission has interpreted its earlier "no-action" position for agents of FCMs who wished to continue to operate as introducing brokers (rather than as APs or branch offices of an FCM) to allow the APs of those agents to remain associated with an FCM even if they were not included in what would be otherwise denominated as a branch office if, among other conditions, the APs were compensated directly by the FCM.[22] The Commission issued that interpretation because it appeared that a "not insubstantial" number of country elevators and cash grain merchants who had formerly done business as agents of FCMs might not want to become introducing brokers or to do business in the name of a futures commission merchant as a branch office. The Commission believed that such interpretive advice was appropriate in light of the fact that persons in that situation might have difficulty deciding whether to apply for introducing broker status in the absence of final rules, particularly inasmuch as their activities as agents and associated persons are "often incidental to [their] principal business. . . ." The Commission indicated, however, that it "will continue to consider the appropriateness of this interpretation as well as whether and in what manner it should be continued when the Commission adopts final rules relating to introducing brokers and their associated persons."[23]

The Commission has carefully considered this matter in view of the comments that addressed this issue and its experience in the administration of its "no-action" position and has determined that the continuation of this interpretive position is unwarranted. The rules which the Commission is now adopting make certain special allowances for country elevators[24] and have been otherwise simplified to facilitate compliance by affected persons. As discussed more fully below, persons who formerly operated as agents of an FCM must elect either to operate as an introducing broker or as a branch office of an FCM or, in the case of an individual, as an AP of an FCM or introducing broker. The principal feature of the Commission's temporary "branch office interpretation" was that an introducing broker for which an FCM assumed full responsibility would not have to meet the capital requirements that would otherwise be applicable to introducing brokers. The alternative capital requirement for introducing brokers (*i.e.*, the guarantee agreement) permits a similar relationship but, the Commission believes, is more fully consonant with the requirements of the Futures Trading Act of 1982 which specifically contemplate the separate existence and business identity of introducing brokers upon the elimination of the former satutory category of "agents" of FCMs.

In this connection, the Commission has also adopted a rule which specifies that each branch office of a Commission registrant must use the name of the firm of which it is a branch and hold itself out to the public under that name. Section 166.4. This rule is intended to eliminate any remaining uncertainty in this area.[25] The Commission also wishes to confirm, in response to questions which have been posed informally to its staff on several occasions, tha an associated person *must* be situated in either the home office or designated branch office of the registrant and that each such office must have either a

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

[18] 48 FR 14933, 14936 (April 6, 1983).

[19] Section 4.31(a) requires only those CTAs which are registered or required to be registered to furnish a Disclosure Document to their prospective clients.

[20] An introducing broker which was exempt from registration as a CTA would nonetheless remain subject to the provisions of Section 4*o* of the Act. *See* Commission rule 4.15 (17 CFR 4.15).

[21] The Commission wishes to emphasize that this latter exemption for associated persons is available to *all* APs (as defined in § 1.3(aa)) and is not limited, as some commentators assumed, only to the APs of futures commissions merchants.

[22] 48 FR 19362 (April 29, 1983).

[23] *Id.* at 19362-63.

[24] *See, e.g.*, § 1.10(i) (financial report filing option for country elevators).

[25] See, e.g., Section 4h of the Act (7 U.S.C. 6h); 48 FR 15890, 15892 n. 16 (April 13, 1983).

branch office manager of designated supervisor.[26]

In this connection, the Commission has become aware of various situations in which a registrant will compensate some other person for the referral of customers. These arrangements include the use of "equity raisers," as well as less formalized relationships in which a registrant will pay either a "finder's" (referral) fee or a percentage of the Commissions generated by the trading activity of the referred customer or client. The Commission does not object to these practices as long as the persons who are so compensated are properly registered. The following examples are intended to illustrate further the Commission's interpretation of the requirements of the Act and the regulations thereunder in certain situations; [27] additional examples, relating to the exemptions from AP registration now being adopted by the Commission and to APs' dual and multiple associations are provided elsewhere in this **Federal Register** notice.

(1) As a service offered to it customers, an independent "financial manager" recommends certain CTAs to its customers based upon the financial manager's assessment of the customer's investment strategies, net worth, and other factors and the CTAs, qualifications and performance. If the financial manager is compensated on a per-trade basis by the CTAs it recommends, it must register an AP of those CTAs (if the financial manager is an individual) or as an introducing broker (if the financial manager is not an individual). If it is compensated by its own clients or by the CTAs on other than a per-trade basis, the financial manager must itself be registered as a CTA (unless it is exempt from registration as such under Section 4m of the Act). The individual employees of the financial manager who solicit customers for referral to the "outside" CTAs must be registered as APs of the financial manager (if the financial manager is itself registered as an introducing broker or a CTA) or as APs of the outside CTAs (if the financial manager is itself an AP).

(2) A financial manager researches the qualifications and performance ("track records") of independent trading advisors for FCMs. The financial manager, for a per-trade fee paid by those FCMs, then recommends CTAs for inclusion on the FCMs' "approved list" of outside CTAs [28] but does not have any contact with customers. The financial manager need not register as an introducing broker or (if an individual) as an AP of the FCM as it does not refer orders or solicit customers.

(3) A commodity trading advisor sells subscriptions to an advisory newsletter and also provides its clients with access to a "hotline" which provides current market quotations and buy/sell recommendations—*i.e.*, it is not managing accounts pursuant to a power of attorney. Upon request, the CTA or its employees will provide its clients with the name of an FCM (or introducing broker) which can execute customer's orders. If the CTA is compensated by the FCM or introducing broker on a per-trade basis, the CTA must register as an introducing broker and its employees must register as APs of the introducing broker. (If the CTA is an individual, both the CTA and its employees may instead register as APs of the FCM or introducing broker to whom they are making the referrals.) If, however, the CTA is directly compensated by its customers for those referrals, its CTA registration will be deemed to be sufficient and registration as an introducing broker will not be required.

(4) Both an FCM and its APs receive trailing commissions for selling a public commodity pool underwritten by another firm. No additional registration is required of either the FCM or the AP because the receipt of a trailing commission for such services is consistent with their registrations as an FCM and associated person, respectively.

B. Associated Persons

The Commission proposed, with certain exceptions, to make the APs of introducing brokers, CTAs, and CPOs subject to the same "sponsorship" standards and fingerprinting requirements as APs of FCMs. Proposed § 3.12. The Commission did not receive any comments specifically addressing that portion of its proposal. The Commission did, however, receive several comments which suggested that it was inappropriate to prohibit APs from being associated with more than one CTA or with more than one CPO. Some of these commentators further objected to what they perceived to be unnecessary duplication of registration requirements in those cases where an AP would be associated with more than one sponsor. The Commission has carefully considered these comments in light of the requirements established by the Futures Trading Act of 1982 and, as discussed in greater detail below, has modified its regulations to establish certain special procedures for the registration of APs of CTAs and CPOs and, in particular, for those APs of CTAs and CPOs who are already registered as associated persons in some other capacity. *See* Section 3.16(e).[29]

The rules for the registration of APs which the Commission is now adopting nonetheless adhere to the principles of "sponsorship" first established by the Commission in December 1980.[30] These standards are now being made applicable to the APs of FCMs and introducing brokers and, with certain exceptions relating to the reporting of dual and multiple associations, to the APs of CTAs and CPOs as well. To accommodate the changes necessary to permit certain dual and multiple associations, the Commission has determined to amend § 3.12, the regulation which presently governs the registration of APs of FCMs, as proposed but to make it applicable only to the APs of FCMs and the APs of introducing brokers; the registration of APs of CTAs and CPOs will now be governed by new § 3.16. Despite this change, the regulations now being adopted by the Commission establish identical standards in those cases where an individual is applying for registration as an AP for the first time, regardless of whether the AP will be associated with an FCM or introducing broker (§ 3.12(c)) or with a CTA or CPO (§ 3.16(c)).[31]

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[26] FCMs, introducing brokers, CTAs and CPO may supplement their applications for registration (Form 7–R) to designate a branch office by the filing of a Form 3–R.

[27] These examples are intended to be illustrative only. Any determination as to whether a person must register with the Commission, and in which capacity, of course, must depend upon all of the particular circumstances surrounding such person's commodity-related activities.

[28] The Commission understands the term "approved list" to refer to those situations where an FCM permits its associated persons to refer those customers who seek to have their accounts managed or guided only to those CTAs, not affiliated with the FCM, who are on the firm's "approved list." The Commission further understands that the existence of an "approved list" does not operate to preclude a customer from independently selecting a CTA to manage or guide trading in the customer's account.

[29] One of the commentators further suggested that the Commission "grandfather" existing principals of CTAs and CPOs from having to register as associated persons. The Commission believes that such a measure is unnecessary inasmuch as those persons have presumably already filed applications for AP registration under the terms of the Commission's "no-action" position for the APs of CTAs and CPOs (48 FR 16879 (April 20, 1983)). Furthermore, and as discussed below, any CTA or CPO which is registered in an individual capacity (*i.e.*, as a sole proprietorship) will be exempt from registration as an AP of a CTA or CPO, respectively. Section 3.16(a)(2).

[30] *See* 45 FR 80485 (December 5, 1980).

[31] Introducing brokers will, however, file registration materials, including applications for AP registration, with the National Futures Association. *See* § 3.2(a). *See also* 48 FR 15940 (April 13, 1983).

Similarly, where an AP is no longer associated with a sponsoring FCM, introducing broker, CTA, or CPO, the standards and procedures for the expedited re-registration of that individual will be identical for all categories of AP registration. Sections 3.12(d), 3.16(d). Where, however, an already-registered AP wishes to become simultaneously associated with a CTA or CPO, the Commission has established special procedures for the reporting of that simultaneous association. Each of these situations is described in detail below.

Initial registration. Except in those cases where a Form 3–R is being filed by a CTA or CPO to report the association with that CTA or CPO of an already-registered AP, the sponsor of an AP's application for registration is required to make certain certifications regarding the applicant. Specifically, the sponsoring FCM, introducing broker, CTA or CPO must 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).[32] Sections 3.12(c)(1)(i), 3.16(c)(1)(i). In this connection, the Commission wishes to clarify, in response to the concern expressed by one of the commentators, that this regulation applies equally to all APs—regardless of whether they are denominated by the sponsor as partners, officers, employees, consultants, agents or independent contractors (or any similar term).[33] Sections 3.12 and 3.16 require the sponsor to certify that it has "hired or . . . *otherwise employed*" an associated person.[34] The latter phrase—which was originally included in the Commission's regulations to cover those situations where a partner of an FCM was also an associated person—is not limited to common law employer-employee relationships, but also includes any relationship or association which requires AP registration.

Sections 3.12(c)(1)(ii) and 3.16(c)(1)(ii) require the sponsor 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 does not apply, however, in the case of "grandfathered" APs of FCMs 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 a sponsoring FCM.) Sections 3.12(c)(1)(iii) and 3.16(c)(1)(iii) further require 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.[35]

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.[36] Furthermore, the Commission anticipates that the continued upgrading of quality overall among registrants will lower costs by reducing turnover of personnel, lost business due to customer dissatisfaction, and litigation arising from the acts of employees.[37] The regulations do not prescribe procedures which must be employed by the sponsor prior to making the required certifications. The Commission contemplates, however, that sponsors will use methods comparable to those customarily employed by the financial community for sensitive positions and may contract with investigative agencies to perform some or all of the screening functions. Although the Commission does not object to such a practice, it nonetheless remains the sponsor's responsibility to assure itself of the accuracy of the representations that are made to the Commission.

The Commission recognizes 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 is, therefore, extending to all categories of APs the provision which permits a sponsor to submit the Form 8–R without the required "Sponsor's Certification" as long as that Certification is submitted at a later date. This "dual processing" allows the Commission to commence its background checks of the applicant [38] while the sponsor conducts its own screening of the applicant prior to its submission of a completed Sponsor's Certification. *See* §§ 3.12(c)(2), 3.16(c)(2). An AP will not be registered, however, until that Certification has been submitted.

With certain exceptions, each Form 8–R submitted in connection with the registration of an AP must be accompanied by a fingerprint card. Sections 3.12(c)(3), 3.12(d)(3), 3.16(c)(3), 3.16(d)(3). A person who is simultaneously applying for AP registration in more than one capacity, however, will only be required to file a single fingerprint card and would not, as one of the commentators assumed, be required to file a fingerprint card for each such capacity.[39] (In those relatively

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[32] If, after the filing of a Form 8–R, the applicant either fails to become associated with the sponsor or if that relationship is terminated, the sponsor must promptly report that fact to the Commission, or in the case of an AP of an introducing broker, to the NFA. Section 3.31(c)(1).

[33] Sections 4k (1), (2), and (3) of the Act (7 U.S.C. 6k (1), (2), (3)), Pub. L. 97–444, § 212, 96 Stat. 2303–05, provide that unless an individual is registered as an associated person of a particular registrant, it is unlawful for that individual to be associated in any of the following capacities with:

(1) A futures commission merchant as a partner, officer, or employee (or any 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' or option 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 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.

Id.; see § 1.3(aa).

[34] Sections 3.12(d)(1)(i), 3.16(d)(1)(i); *see* §§ 3.12(c)(1)(i), 3.16(c)(1)(i).

[35] 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. If, for example, an AP applicant or registrant answered "Yes" in response to any of those questions, the sponsor is 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 the Commission's regulations 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 regulations do 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); 48 FR 14933, 14937 n.32 (April 6, 1983).

[36] 45 FR 18356, 18357 (March 20, 1980); 45 FR 80485, 80488 (December 5, 1980); 48 FR 14933, 14937 (April 6, 1983).

[37] *Id.*

[38] The Commission and the NFA screen applicants and principals with the Federal Bureau of Investigation and the Securities and Exchange Commission ("SEC") and, where necessary, conducts or causes to be conducted further investigations of the individual's fitness.

[39] Similarly, a person who was simultaneously filing as a principal and as an associated person would only have to file a single fingerprint card.

rare cases where an AP will have different sponsors for each capacity of AP registration—as, for example, where a CPO has a separate CTA subsidiary—the application for registration as an AP of a CPO on Form 8–R or Form 8–S should be accompanied by a Form 3–R listing that individual as an AP of the CTA. Both the CTA and the CPO will then be the sponsors of, and responsible for, the associated person. *See* § 3.16(e)(2).)

Expedited AP registration procedures. Proposed § 3.12(d) would have extended the expedited registration procedure which is presently available to APs of FCMs to applicants for AP registration in any capacity. Specifically, the Commission's proposal would have allowed any person whose AP registration had terminated within the preceding sixty days, as well as any person whose registration as an AP was still in effect, to use this expedited procedure. Thus, for example, an individual who was already registered as an AP of a CTA could use this expedited procedure to become immediately registered as an AP of an FCM. Similarly, an AP of an FCM whose registration had terminated within the preceding sixty days could, under the Commission's proposal, have filed Form 8–S to become an AP of either another FCM or to become an AP of an introducing broker, CTA or CPO.

These expedited procedures allow an eligible individual to become registered as an AP of a 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 must personally certify that his AP registration in any capacity is neither suspended nor revoked, that he qualifies for expedited registration, 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 withdrawal of an application for registration), the sponsor has been given a copy of the complaint or letter issued in that proceeding. Within sixty days of the filing of the Form 8–S, the AP and the sponsor must complete and the sponsor must file with the Commission a completed Form 8–R (including the "Sponsor's Certification" described above), the registration fee and a fingerprint card.[40]

[40] No fingerprint card is required, however, in those cases where the Forms 8–S and 8–R are being filed prior to the first expiration of that individual's registration as an associated person of an FCM subsequent to July 1, 1982 and the AP is remaining under the sponsorship of an FCM.

The Commission has refined its proposal in light of the special procedures, discussed below, which have been established for the reporting of dual and multiple associations of APs of CTAs and CPOs. As revised, an AP who wishes to become associated with an FCM or with an introducing broker may still use Form 8–S—both in the case where that individual remains registered as an AP of a CPO or CTA and where that individual's prior AP registration in any capacity has terminated within the preceding sixty days.[41] By comparison, however, an individual who wishes to become asssociated with a CTA or a CPO would be required to file Form 8–S (and, within sixty days, a Form 8–R, a fingerprint card, and the registration fee) only in those cases where the AP is no longer associated with any category of registrant; as described more fully below, APs who remain registered as such must file a Form 3–R to become associated with a CTA or CPO.

Multiple associations. Proposed § 3.12(f) would have prohibited an AP from being associated with more than one registrant in any capacity. Thus, while an AP would have been permitted to become associated with up to four sponsors (one FCM, one introducing broker, one CTA, and one CPO), he would not have been allowed to be an AP with any two registrants in the same category (*e.g.*, two FCMs or two CPOs). The Commission explained that its proposal was consistent with the then-existing rule which prohibited an AP from being associated with more than one FCM and that, in the Commission's view, "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.[42] The Commission specifically requested 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 for APs of commodity trading advisors and APs of commodity pool operators permitted by Sections 4k (2) and (3) of the Act.[43]

[41] In those instances where an AP was registered as such prior to July 1, 1982 and has not yet re-registered under the sponsorship of a futures commission merchant, the sponsoring FCM must file either a completed Form 8–R or a Form 8–S on or before the scheduled expiration date of the AP's registration. Where the FCM does elect to file the Form 8–S (as, for example, where it may not have completed its processing of the Form 8–R prior to the expiration date), it must file the completed Form 8–R within the ensuing sixty days.

[42] 48 FR 14933,14939 (April 6, 1983) (footnote omitted).

The Commission received several comments on this portion of its proposal. Some of the commentators strongly supported the Commission's proposal and noted that it would be difficult to supervise and monitor an AP's activities if the AP were permitted to have several employers. Other commentators, however, noted that it is not uncommon for persons who will now be required to register as APs of CTAs or CPOs to work for several firms at one time. Some of these CTAs and CPOs maintained that, because of the relatively limited scale of their operations, it would be prohibitively expensive for them to retain a full-time sales force and that, of necessity, they entered into contractual arrangements whereby an individual or firm generates potential clients or pool participants for several CTAs and CPOs at the same time. These commentators argued that this practice is actually advantageous to potential clients and pool participants because it has the practical effect of offering them a wider choice of investment alternatives than would otherwise be available if they were solicited by an AP whose sole allegiance was to a particular CTA or CPO.

The Commission has carefully considered each of these comments as well as its experience with the existing restriction on the APs of FCMs[44] and has refined the final rule in a manner which it believes will accommodate these concerns as well as the Commission's desire to assure that responsibility for an AP's conduct is clearly delineated and that APs continue to remain fit for registration. Specifically, the Commission has determined to continue to prohibit APs from being associated with more than one FCM and has similarly determined to preclude APs from associating with more than one introducing broker. As noted above, those commentators who supported the Commission's proposal noted that it would be difficult to ascribe responsibility in cases where an AP is working for different sponsors. The Commission believes this comment has merit, particularly in light of the

[43] Id.

[44] For example, the Commission's staff, acting pursuant to delegated authority (*see* § 3.12(g)), has granted petitions for exemption from the prohibitions contained in § 3.12(f) in certain limited circumstances, subject to appropriate conditions—such as joint and several liability—in cases where an AP sought to be associated with two FCMs. *See also* 48 FR 4650 (February 2, 1983).

similarity between the functions of introducing brokers and FCMs, and has therefore determined also to preclude APs from being simultaneously associated with an FCM and with an introducing broker. Section 3.12(f) (1), (2).

As noted earlier, the Commission has determined to allow APs of CTAs and CPOs to be associated with more than one CTA or CPO (or with a CTA and a CPO) under certain conditions, including that all such dual and multiple associations must be reported to the Commission on Form 3–R. Similarly, the association with a CTA or CPO of an individual who is already registered as an AP of an FCM or introducing broker must be reported on Form 3–R. The filing of such a Form 3–R will constitute a certification that the commodity trading advisor or commodity pool operator has verified that the AP is currently registered as an associated person in *any* capacity (*i.e.*, as an AP of an FCM, introducing broker, CTA or CPO) and that the AP is not subject to a statutory disqualification as set forth in Section 8a(2) of the Act.

Furthermore, the filing of such a Form 3–R will constitute an acknowledgment by the CTA or CPO that in addition to its responsibility to supervise that associated person, the commodity trading advisor or commodity pool operator will be jointly and severally responsible for the conduct of the associated person with respect to the solicitation of any client's or prospective client's discretionary account, or the solicitation of funds, securities, or property for a participation in a commodity pool, with respect to any customers or option customers common to the trading advisor or pool operator and any other CTAs or CPOs with which the AP is associated.[45] Section 3.16(e)(2)(i). This latter condition has been included because of the Commission's concern that in cases where an AP is engaged in soliciting clients for more than one CTA or in soliciting pool participants for more than one CPO, it could be difficult not only to assign responsibility to a particular trading advisor or pool operator for any misrepresentations or omissions made by the AP in the course of that solicitation, but also to conduct audits for these purposes. (For example, if an AP were to represent that the risks of commodity trading can be eliminated completely by the use of "stop-loss" orders,[46] it would be difficult for the customer solicited by that AP to prove in any subsequent dispute that the representations on which the customer relied were made on behalf of the trading advisor who ultimately managed that customer's account.) The Commission understands that this latter requirement may limit these multiple associations but, in view of the substantial regulatory benefits from such a provision, does not believe that it will unnecessarily restrict common industry practices.

An AP who is already registered in some other capacity and for whom a CTA or CPO now files a Form 3–R will be registered as an AP of that CTA or CPO and will remain so registered as long as he remains associated with that sponsor. Section 3.16(b). Thus, for example, an AP of a CTA who becomes associated with a CPO will also be registered as an AP of that CPO. Even if the AP later leaves the CTA's employment, he will remain registered under the sponsorship of the pool operator as long as he continues to be associated with that CPO. Because such an AP will not be required to file a Form 8–R or a fingerprint card when he becomes associated with the CPO—unlike the APs of FCMs or introducing brokers who register under the expedited procedures provided by § 3.12(d) [47]—persons who are APs of more than one CTA or CPO (or who are already registered as APs of an FCM or introducing broker when they become associated with a CTA or CPO) will be periodically required to file a fingerprint card beginning approximately two years after they first become associated with a CTA or CPO. This procedure for the fingerprinting of APs with multiple associations is intended to permit the Commission or its designee to confirm an AP's continued fitness for registration. Section 3.16(e)(2) (ii).[48]

Even though the Commission has adopted this special procedure to accommodate the diverse arrangements by which some registrants and, in particular, CTAs and CPOs solicit and conduct business, the Commission nonetheless agrees with those commentators who were concerned that allowing certain types of dual and multiple associations could have the effect of diffusing an AP's sponsors' supervisory responsibilities to the point where it could become impossible to ascertain who was responsible for the AP's conduct. In particular, the Commission was concerned that allowing an AP to engage in certain parallel types of activity on behalf of different sponsors could result in situations where each sponsor would attempt to disavow any responsibility for the AP by asserting that the wrongful acts or omissions of the associated person were not attributable to that sponsor but rather to the AP's other employers. For this reason, and as explained above, such multiple associations will be permitted only where an AP soliciting for two or more CTAs or CPOs will, to the extent that a client or pool participant is solicited for those CTAs or CPOs, be the joint and several responsibility of each such trading advisor or pool operator.

The Commission has similar concerns with respect to the solicitation of discretionary accounts and pool participations by APs of FCMs or introducing brokers who, absent appropriate limitations, could be simultaneously associated with a CTA or CPO. The Commission recognizes, however, that it is customary for an FCM, to the extent that it recommends CTAs to its customers, to provide the names of several trading advisors and separately, to allow other registered CTAs not on the FCMs' "approved list" to manage customers' accounts pursuant to a power of attorney. The Commission has, therefore, adopted a rule which prohibits an AP from being associated with an FCM and a CTA where that FCM solicits or intends to solicit clients or prospective clients for that trading advisor. In such a case, however, an AP associated with the FCM may solicit customers for any trading program recommended by the FCM without having to register as an AP of the CTAs which will be managing the customers' accounts. Section 3.12(f)(3). The Commission has adopted a similar rule with respect to introducing brokers and CTAs. Section 3.12(f)(7). For the same reasons, the Commission has decided to prohibit an AP from being simultaneously associated with a CTA and with an FCM or introducing broker for which the FCM or introducing broker will carry or introduce clients' or prospective clients' discretionary accounts (§§ 3.12 (f)(4), (f)(8)).

[45] The terms "customer" and "option customer," as defined in Commission rules 1.3(k) and 1.3(jj) (17 CFR 1.3(k), (jj)), include discretionary account clients and pool participants.

[46] *See* Commission rule 1.55(b) (17 CFR 1.55(b)).

[47] A number of the commentators supported the Commission's proposal to allow APs to become associated with CTAs and CPOs upon the filing of a Form 3–R. The Commission has declined, however, to adopt the suggestion of some of those commentators that APs who are already registered in any capacity be allowed to add additional associations without an immediate review of their continued fitness for registration. *See* 48 FR 14933, 14938 (April 6, 1983); 45 FR 80485, 80487 (December 5, 1980).

[48] *See generally* 45 FR 18356, 18356–57 & n.5 (March 20, 1980); 45 FR 80485, 80487 (December 5, 1980).

The Commission is adopting similar limitations on the ability of an AP to be associated with a CPO and with an FCM or introducing broker. The Commission recognizes that it would be impractical to register all of an FCM's or introducing broker's APs with each CPO for whom the FCM or introducing broker carried or introduced accounts. Thus, and as with the solicitation of discretionary accounts by an AP of an FCM or of an introducing broker, an AP who solicits pool participations for an FCM or introducing broker will not be permitted to be associated with a CPO which will operate a pool solicited by the FCM or introducing broker; such an AP will be deemed to be associated solely with the FCM or introducing broker, and not with the pool operator. Sections 3.12 (f)(5), (f)(9). Finally, an AP will not be allowed to become associated with a CPO and an FCM or introducing broker for which the FCM or introducing broker will carry or introduce the account of a commodity pool operated by that pool operator (§§ 3.12 (f)(6), (f)(10)).

Exemptions from AP registration. Proposed § 3.12(h) would have established certain limited exemptions from AP registration in addition to those established by Section 4k of the Act. Sections 4k(1)–(3) of the Act exempt any individual who is registered as an FCM, floor broker, or introducing broker from AP registration in any capacity while Sections 4k(2) and 4k(3) further exempt CPOs and CTAs from having to register as APs of commodity pool operators and commodity trading advisors, respectively. As described more fully below, the Commission has substantially expanded upon its proposal and has augmented these statutory exemptions to eliminate entirely the need for AP registration in appropriate cases.

For example, the Commission's proposal would have exempted from registration as an AP of a commodity pool operator any individual who is already registered with the National Association of Securities Dealers ("NASD") as a registered representative or registered principal. As the Commission observed at that time:

> [S]ome CPOs register their pool offerings with the Securities and Exchange Commission 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 CPOs 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. . . .
>
> 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. 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. 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 and Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, the Commission contemplates 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.[48]

The commentators generally supported the Commission's proposal but noted that the proposed exemption would be nullified if the persons who would otherwise be exempt from registration as APs of CPOs nonetheless had to register in some other capacity. As noted above, the Commission has modified the definition of "introducing broker" to exclude any associated person acting in his capacity as an AP, regardless of whether that associated person is registered or exempt from registration (§ 1.3(mm)). The Commission is also broadening the exemption for these NASD registrants so that they will be exempt from AP registration in all capacities (*i.e.*, as an AP of an FCM, introducing broker, CTA or CPO) as long as the exempted individual's only commodity-related activity is the solicitation of funds, securities or property for a participation in a commodity pool (or the supervision of any person or persons so engaged) and that activity is conducted pursuant to that individual's NASD registration. Thus, this exemption will not be available to any individual who is engaged in any other activities which are subject to regulation by the Commission. Sections 3.12(h)(2), 3.16(a)(5).

[48] 48 FR 14933, 14939 (April 6, 1983) (footnotes omitted).

In addition, it has come to the attention of the Commission that individuals who are engaged exclusively in the offer and sale of certain types of offerings under the NASD's "direct participation program" [50] may be registered with the NASD as "limited representatives" or "limited principals." [51] The Commission believes that the considerations articulated above would apply equally to these latter classes of NASD registrants and has accordingly expanded this exemption from AP registration.

At the same time, however, the Commission wishes to emphasize that its grant of exemption from registration for these APs does not mean that other provisions of the Act, in particular Section 4b and 4*o*, are not applicable to these individuals. They also remain subject to enforcement proceedings brought under Sections 6, 6b or 6c of the Act and private actions brought under Section 22. Moreover, the Commission intends to monitor the activities of these exempt individuals and will consider amending its regulations to remove this exemption if conditions warrant.

The Commission has also exempted CTAs from registration as APs of CTAs and has exempted CPOs from registration as APs of CPOs. Section 3.16(a)(2). The Commission has further exempted any individual who is already exempt from registration as a CTA or CPO pursuant to certain of the Commission's Part 4 rules from registration as an AP of a CTA or from registration as an AP of a CPO, respectively. Section 3.16 (a)(3), (a)(4). Neither of these exemptions would apply, however, if the person who was exempt from registration was respectively associated with a CTA or CPO which was not itself exempt from registration or which had registered as a CTA or CPO notwithstanding the availability of those exemptions from registration. Finally, one of the commentators noted that it is not uncommon for commodity pools to be operated by more than one CPO and that, in such a case, it did not appear to be necessary to require an AP to register under the sponsorship of each of those pool operators. The Commission agrees and has provided an exemption for any such individual who is registered as an

[50] The Commission understands the term "direct participation program" to refer to those offerings which provide for flow-through tax consequences regardless of the structure of the legal entity or the vehicle for distribution. NASD Rules of Fair Practice, Article III, section 34(d)(2), NASD Manual (CCH) ¶ 2191, at 2109-33—2109-34.

[51] *Id.*, Article I, Schedule C, Part II, section 2(c) and Part I, section 2(d), NASD Manual (CCH) ¶ 1102A, at 1054 and 1050-51.

AP of any one of the pool's CPOs. Section 3.16(a)(6). Each of the CPOs will, however, be fully responsible for the conduct of those APs with respect to the sale of units in that commodity pool.

The following chart and examples illustrate the application of these requirements:

AP still associated with and registered as AP of—	AP intends to become simultaneously associated with—			
	FCM	IB	CTA	CPO
FCM	Not allowed	Not allowed	CTA files Form 3-R. § 3.16(e). (*But see* § 3.12(f).)	CPO files Form 3-R. § 3.16(e). (*But see* § 3.12(f).)
IB	§ 3.12(f)	§ 3.12(f)		
CTA	FCM files Form 8-S/8-R, FP card, fee.	IB files Form 8-S/8-R, FP card, fee.	CTA files Form 3-R.	CPO files Form 3-R.
CPO	§ 3.12(d)	§ 3.12(d)	§ 3.16(e)	§ 3.16(e)

Note.—An AP whose registration has terminated within the last 60 days must use Form 8-S to become re-registered as an AP except: (1) if he remains registered as an AP with another sponsor, he can use Form 3-R to become associated with a CTA or CPO (see chart); and (2) an AP of an FCM who was registered prior to July 1, 1982 may associate with another FCM upon the filing of a Form 3-R until that prior registration expires, at which time the AP must be re-registered under § 3.12 (c) or (d).

(1) An AP of an FCM terminates his employment with that FCM and, within sixty days, becomes associated with another sponsoring FCM. The AP will be re-registered upon the mailing to the Commission by the new FCM of a Form 8-S. The new sponsor must also file a Form 8-R, fingerprint card, and the registration fee for the AP within sixty days. Section 3.12(d). The same requirements would apply if, after leaving the FCM, the AP became associated with a CTA, CPO, or introducing broker (except that the introducing broker would file the Forms, fingerprint card, and any fee with the National Futures Association). Sections 3.16(d) (CTA, CPO), 3.12(d) (introducing broker).

(2) An AP of a CTA wants to become simultaneously associated with another CTA. The second CTA files a Form 3-R to report that association. Section 3.16(a)(2).

(3) An AP of a CTA wants to become simultaneously associated with a CPO. The CPO files a Form 3-R to report that association. Section 3.16(e)(2).

(4) Each of the three general partners of a commodity pool is registered as a CPO. An individual who is registered under §§ 3.16 (c), (d), or (e) as an AP of any of CPO "A" need not re-register as an associated person of the other two commodity pool operators, "B" and "C." If that AP later intends to solicit pool participants for CPOs, "B" and "D," his registration as an AP of "A" is not sufficient and he must re-register under the sponsorship of either "B" or "D." Section 3.16(a)(6).

(5) An AP of an FCM (or introducing broker) wishes to continue his employment with the FCM (or introducing broker) and also become associated with a CTA. The CTA must file a Form 3-R to report that association. Section 3.16(e)(2). Note, however, that § 3.16(e)(1) incorporates the prohibitions on dual and multiple associations contained in § 3.12(f)(3)-(4) (and, for introducing brokers, §§ 3.12(f)(7)-(8)), so that the AP could not be simultaneously associated with the FCM or introducing broker and with the CTA if the FCM or introducing broker solicits, or intends to solicit, clients for the CTA or carries or introduces, or intends to carry or introduce, the CTA's clients' or prospective clients' discretionary accounts.

(6) An AP of a CTA wishes to become associated with a CPO while remaining an AP of an FCM or introducing broker. The CPO files a Form 3-R to report that association (§ 3.16(e)(2)) if the AP is, in fact, not prohibited by §§ 3.12(f)(5)-(6) or §§ 3.12(f)(9)-(10) from becoming associated with the CPO.

(7) An AP of a CTA or CPO wants to become simultaneously associated with an FCM. The FCM must file a Form 8-S (and, within sixty days, a Form 8-R, fingerprint card, and the registration fee) if that simultaneous association is not prohibited by § 3.12(f). Section 3.12(d).

(8) The facts are the same as in Example (7), above, except that the AP intends to become associated with an introducing broker. If the AP is, in fact, permitted to become associated with the introducting broker while remaining associated with the CTA or CPO (*see* § 3.12(f)), the introducing broker would file the Forms and related materials with NFA.

(9) An AP of an FCM or introducing broker recommends CTAs on the FCMs or introducing broker's "approved list." The AP is deemed to be associated solely with the FCM or introducing broker and does not register as an AP of those CTAs. Section 3.12 (f)(3), (f)(7).

(10) An AP of an FCM or introducing broker solicits commodity pool participations on behalf of that FCM or introducing broker. The AP is deemed to be associated solely with the FCM or introducing broker and does not register as an AP of the CPO(s) which will be operating the pool. Section 3.12 (f)(5), (f)(9).

(11) An AP of an FCM wants to "moonlight" by working for a CTA. The CTA files a Form 3-R to report that association but may hire the AP only if the FCM by whom the AP is also employed does not solicit for the CTA or carry accounts managed by the CTA. Sections 3.16(e), 3.12(f)(3)-(4).

(12) An individual employed by a broker-dealer is registered with the NASD as a "registered representative." That individual may solicit commodity pool participations and receive trailing commissions in connection with that pool offering without having to register as an AP (§§ 3.12(h)(2), 3.16(a)(5)) or as an introducing broker (§ 1.3(mm)).

(13) A CPO is exempt from registration pursuant to Commission rule 4.13 (17 CFR 4.13) and has not, therefore, registered as a CPO. The persons who solicit for that pool operator are not required to register as APs of that CPO. Section 3.16(a)(4).

(14) A CTA who advises 15 or fewer persons at any one time hires an individual to solicit discretionary accounts. Because that solicitation is inconsistent with the CTA's "not hold[ing] himself out to the public as a commodity trading advisor"—which is necessary for the exemption from CTA registration contained in Section 4m(1) of the Act (7 U.S.C. 6m(1)) to apply—a CTA must register as such and the solicitor must register as an AP.

(15) An introducing broker has been operating as such pursuant to the Commission's "no-action" position. Because that introducing broker has already filed a Form 7-R, a "transfer" list for its APs, and Form 8-Rs and fingerprint cards for those principals who were not already registered as APs,[53] it need not refile those Forms. The introducing broker must, however, file a Form 1-FR with the NFA and the appropriate regional office of the Commission (*see* § 1.10(c)) within ninety days after these regulations become effective. (That Form 1-FR must adequately demonstrate the introducing broker's compliance with either (1) the $20,000 minimum capital requirement set forth in § 1.17(a)(1)(ii) or (2) the alternate capital requirement set forth in § 1.17(a)(2)(ii)—*i.e.*, a guarantee

[53] *See* 48 FR 15890, 15893 (April 13, 1983).

agreement.) Furthermore, the introducing broker will be required to file appropriate applications for any new APs and, thereafter, to renew its registration.

(16) An introducing broker is registered after having submitted evidence of compliance with the Commission's minimum financial requirements. *See* Example (15), above. Until January 31, 1984, the introducing broker may hire new APs by filing, in accordance with the requirements of temporary rule § 3.12a–(T), a Form 3–R for APs which are already registered as APS of an FCM. The introducing broker does not have to file Forms 8–S or 8–R, a fingerprint card, or the registration fee for any such AP.

(17) An AP has been employed by a CTA pursuant to the Commission's "no-action" procedures. That AP now wishes to leave the CTA and become employed by an introducing broker. The introducing broker may use the expedited (Form 8–S) re-registration procedure provided by § 3.12(d) only if the AP has already been registered as an AP of the CTA or in some other capacity of AP registration.

(18) The facts are the same as in Example (17), above, except that the AP intends to work simultaneously for two CTAs. The AP does not qualify for the Form 3–R notification procedure provided by § 3.16(e) if he is not yet registered. In such a case, the AP would be an applicant for initial registration and would have to file a Form 8–R, fingerprint card and the registration fee. Section 3.16(c).

(19) A corporation has two subsidiaries, one of which is registered as a CTA while the other is registered as a CPO. If an AP is going to work for both of the subsidiaries, either one may act as the AP's initial sponsor. If the CTA makes the necessary certifications on Form 8–R or Form 8–S, a Form 3–R should be filed simultaneously (attached to the Form 8–R or 8–S) to reflect the association of the AP with the CPO. The CPO would then also be the AP's sponsor (§ 3.1(c)) and the AP would be registered as an associated person of both the CTA and the CPO. (The same Form 8–R, 8–S, or 3–R can be used to sponsor an AP in more than one capacity only where the sponsor is itself registered in more than one capacity under the same name.)

(20) An FCM is also registered as a CPO. When it files applications for registration of behalf of its APs, it indicates only that the APs will be associated with the FCM. Section 3.12(f)(5)–(6). (Form 8–Rs submitted for its principals, however, should indicate that the individuals in question will be affiliated with both entities.)

Petitions for exemption. The Commission recognizes that there may nonetheless be instances where the application of these rules may have collateral consequences which are unnecessary to the Commission's regulatory objectives. Because it is impossible for the Commission to anticipate the circumstances in which its rules may work a hardship that is unrelated to its goals of verifying an applicant's fitness for registration and customer protection, the Commission has extended to all APs and their sponsors the ability to petition for an exemption from any aspect of the AP registration rules. Sections 3.12(g), 3.16(g). Any such petition must, however, establish with particularity why an applicant should be exempted from the requirements of those sections and why such an exemption would not be contrary to the public interest and the purposes of the provision (*e.g.*, the prohibitions on dual and multiple associations) from which exemption is sought.

C. *Other Registration Regulations*

Processing by the National Futures Association. As discussed above, the Commission has authorized the National Futures Association to receive and process applications for registration filed by introducing brokers and the APs of introducing brokers. Section 3.2 (formerly designated as § 3.4) has, therefore, been amended to indicate specifically that NFA will, in almost all cases, have the responsibility that would otherwise be exercised by the Commission with respect to these registration categories.[53] For convenience of reference, a number of the Commission's other regulations have been similarly amended to make specific reference to NFA.[54]

Although the Commission contemplates that NFA will ultimately assume the registration responsibilities for additional categories of registrants, there will nonetheless be instances during this interim period where both the Commission and NFA are processing applications and related materials for different registration capacities and, therefore, where an applicant or registrant will be required to filed the same documents with both the Commission and NFA. The Commission has therefore adopted a rule which will allow any person who would otherwise have to file the identical materials with both the Commission and NFA to submit in lieu of two sets of Forms one original Form and a photocopy of the Form if the photocopy contains an original (*i.e.*, manual) signature and date. Section 3.2(b). Thus, for example, a corporation which wished to apply for registration as an introducing brokers and as a CPO could file an original Form 7–R with the Commission and a photocopy of that Form with NFA. Similarly, to the extent the firm's principals were not "grandfathered" from the requirement to file Form 8–Rs and fingerprint cards, original Forms and fingerprints could be filed with the Commission and signed copies could be filed with the NFA.

Registration expiration. The Commission has previously deferred the expiration date of FCM and floor broker registrations from December 31, 1982 to March 31, 1983 and from December 31, 1983 to March 31, 1984. 47 FR 52954, 52955 (November 23, 1982). The Commission has now made this change in the registration cycle permanent, so that all FCM and floor broker registrations will expire on March 31st (rather than December 31st) of each year. Section 3.2(d). The registration of CTAs and CPOs will continue to expire on June 30th while the registration expiration date of introducing brokers will be determined by NFA, as will that of any other categories of registrant other than associated persons (*see* §§ 3.12(b), 3.16(b)), where registration processing is performed by the NFA.

Fingerprinting. The Commission is also making 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. As the Commission explained when it proposed those rule changes, although the Commission had previously determined to "grandfather" any individual who had a "current" Form 8–R (or the former Form 94) on file with the Commission on July 1, 1982 (the date those rules first became effective), it had come to the attention of the Commission that this latter exemption was somewhat broader than originally contemplated. Specifically, the former 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 have been interpreted to allow an individual who had a 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

[53] For example, the Commission, at least for the time being, is retaining the exclusive authority to permit an introducing broker to withdraw from registration pursuant to § 3.33.

[54] *See, e.g.*, §§ 1.10, 1.12, 1.16, 3.12, 3.15, 3.30, 3.31.

file an updated Form 8–R and fingerprint card. The Commission therefore proposed to amend the definition of the term "current" 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. The Commission did not receive any comments on that portion of its proposal and is adopting those rules and rule amendments with only minor changes.[55] Specifically, those rules have been modified to include references to § 3.16, the newly-adopted rule relating to the registration of APs of CTAs and CPOs. Section 3.15, which establishes procedures for the registration of introducing brokers, has also been further modified to require the filing of applications for registration and related materials with the NFA rather than with the Commission.

Section 3.21 has similarly been amended to refer to introducing brokers and the new categories of associated persons as well as to the processing of registration applications by the National Futures Association. That rule already allows the filing of a photocopy of an applicant's or principal's fingerprint card (and criminal history sheet, if any) in certain instances where an individual was simultaneously fingerprinted for a position which requires registration with both the Commission and, for example, a securities industry self-regulatory organization such as the NASD.[56] The Commission is now extending the applicability of that rule to provide comparable relief in those cases where an individual has recently been registered in one capacity (*e.g.*, as an AP of a CTA) and shortly thereafter decides to apply for registration in another capacity which would otherwise require him to be fingerprinted (*e.g.*, as an AP of an FCM).[57]

Changes and corrections; notices of termination. Section 3.30, which merely makes explicit a registrant's or principal's continuing duty to furnish a current address for receipt of communications from the Commission, has been amended to add references to introducing brokers and to specify that this obligation applies regardless of whether the application for registration (or in the case of a principal, the biographical supplement filed on Form 8–R) was filed with the Commission or with the NFA. Section 3.30 further provides, however, that communications relating to the registration of an associated person may be transmitted to the AP's sponsor, a measure which was supported by the commentators. *See also* § 3.4(b).

The Commission had proposed to amend § 3.33, which relates to withdrawal from registration, only to provide that an introducing broker which is seeking to withdraw its registration must supply a form 1–FR with its request for withdrawal. In view of the amendments to the Commission's minimum financial and related reporting requirements that have now been adopted by the Commission for "guaranteed" introducing brokers, the Commission has further amended that rule to provide an FCM which is a party to a guarantee agreement and which seeks to withdraw from registration must first have made arrangements for the termination of any such agreement in accordance with the provisions of § 1.10(j). Section 3.33(b)(7)(vi). The Commission has also amended § 3.33(c) to make clear that introducing brokers which are securities brokers or dealers or which are country elevators may file a copy of the reports they would otherwise be allowed to file if they had chosen to remain registered, in lieu of form 1–FR.

Proposed § 3.31(d) would have required any CTA or CPO which allows an AP who is already registered in some other capacity to become associated with the CTA or CPO upon the filing of a Form 3–R. As discussed earlier, that requirement has been included in the regulation governing the registration of APs of CTAs and CPOs (*see* § 3.16(e)(2)); the Commission is, therefore, amending § 3.31 only to incorporate appropriate references to introducing brokers and the new categories of associated persons and to the filing of registration materials relating to introducing brokers and their APs with the National Futures Association.

One commentator requested that the Commission clarify at what point an associated person is deemed to be "terminated" for purposes of § 3.31(c)(1), which requires an AP's sponsor to notify the Commission (or, in the case of an introducing broker, the NFA) of that termination. In particular, this commentator asked if an AP who receives "trailing" commissions resulting from the sale of commodity pool participations continues to be associated with the FCM, introducing broker, or pool operator or whether, once the AP has ceased the actual solicitation of pool participations, the AP is deemed to be no longer associated with the sponsor. The Commission interprets Section 4k of the Act to require the registration, as an associated person, of any individual who receives trailing commissions unless that person would otherwise be exempt from registration.[58] Under the Commission's rules, such an AP would be required to remain registered as an AP of the sponsor as long as he continued to receive such commissions and as long as he remained associated with that sponsor (*i.e.*, for future offerings). Section 3.16(b). The CPO would not, therefore, have to file a notice of termination on either Form 8–T or U–5 at the time solicitations were ended if the AP did not then cease to be associated with the CPO.[59] The Commission wishes to emphasize, however, that the duty to apprise the Commission (or the NFA) of changes, corrections, and terminations does *not* apply where an AP is exempt from registration and has not so registered. Thus, for example, if participation in a commodity pool was solicited for CPO by an NASD registered representative, the CPO would not have to notify the Commission that the unregistered AP was no longer associated with the pool operator when the offering closed.

"Transfer" of APs. When it proposed rules for the registration of introducing brokers and the APs of introducing brokers, CTAs, and CPOs, the Commission recognized that many APs were associated with an FCM through an agent and that, absent appropriate relief, these APs would have to re-register if the agent itself became registered as an introducing broker. *See* proposed §§ 3.12 (a), (b). The Commission therefore proposed to allow an AP to "transfer" his registration, on a one-time basis, from an FCM to an introducing broker, CTA, or CPO. Proposed § 3.12a–(T). The Commission explained that its proposal would eliminate the need for these APs to be formally re-registered and would

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[55] *See* §§ 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); 3.15 (a)(2)(i), (c)(1) (introducing brokers).

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

[57] In those cases where the individual is now applying for registration as an FCM, floor broker, CTA, CPO, or introducing broker or where the individual will merely be a principal of such an applicant or registrant, a second fingerprint card would not be required. *See* §§ 3.10 (a)(2)(ii), (c)(2) (FCMs); 3.11(b)(2) (floor brokers); 3.13 (a)(2)(ii), (c)(2) (CTAs); 3.14 (a)(2)(ii), (c)(2) (CPOs); 3.15 (a)(2)(ii), (c)(2) (introducing brokers).

[58] The Commission similarly interprets Section 4k to require the registration as an AP of any individual who makes representations to existing discretionary account clients or pool participants to encourage their continued participation in a discretionary account program or a commodity pool.

[59] Section 3.31(c) formerly required registrants to report the termination of an AP or principal within 10 days. The Commission has now amended that rule to extend the reporting period to 20 days.

therefore make unecessary the filing of a Form 8–S, Form 8–R, fingerprint card, and registration fee for each of the APs.

The Commission is now adopting that rule with certain modifications. Specifically, the Commission has decided to allow registered APs to use these special provisions to transfer their registrations not only from an FCM to an introducing broker, but also from an introducing broker to an FCM. For example, an introducing broker who has been operating under the Commission's "no-action" position may now find that it is unnecessary to register as an introducing broker; in such an instance, an AP of that introducing broker could "transfer" his registration from that introducing broker to a futures commission merchant even if the FCM had not previously sponsored the associated person.[60] The Commission has determined, however, not to make similar provisions for the APs of CTAs and CPOs as proposed. Although some CTAs and CPOs were formerly designated as agents of FCMs, the Commission believes that the relatively limited number of instances where this special "transfer" provision would be of use is outweighed by the additional costs that would have to be incurrred by the Commission in order to make the necessary additional changes in its computerized registration processing system.

The Commission further anticipates that to the extent that introducing brokers are also registered as CTAs or CPOs, their APs generally will not be permitted to be registered in both capacities (*see* §§ 3.12(f), 3.16(e)(1)) and that this "transfer" provision would, therefore, be unnecessary.

Registration of foreign persons. The Commission and its staff have periodically received inquiries as to whether persons who are engaged in activities which would require registration if conducted in this country are nonetheless required to register if they confine their activities to areas outside the United States.[61] The Commission has previously indicated with respect to the APs of futures commission merchants that it believe that, given this agency's limited resources, it is appropriate at this time to focus [the Commission's] customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets and that the protection of foreign customers of firms confining their activities to areas outside this country, its territories, and possessions may best be for local authorities in such areas. Any person who solicits or accepts orders from within, or from any person residing within, the United States, its territories, or possessions, or who supervises any person or persons so engaged, however, would be required to register. . . .[62]

Similarly, a foreign broker would generally not need to register as an introducing broker. Although these persons will not be required to register with the Commission, they do remain subject to applicable portions of the Commission's reporting requirements (17 CFR Parts 15–21). Affected persons should also be aware that the Commission views advertising to be a form of solicitation, so that a person who employs any form of advertising medium which can reasonably be expected to reach persons residing within the United States, its territories, or possessions will, absent some other exemption, be required to register in an appropriate capacity.

III. Minimum Financial and Related Reporting Requirements for Introducing Brokers

A. Principal Revisions to Proposed Rules

The Commission proposed 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 new capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).[63]

The proposed minimum adjusted net capital level would effectively have been $25,000, however, since all introducing brokers must join NFA in order for their customers' accounts to be carried by an NFA member FCM.[64] The Commission also proposed a financial "early warning" requirement for introducing brokers, similar to the early warning requirement which applies to FCMs, which would have required an introducing broker to give notice and file monthly financial reports if its adjusted net capital fell below 150 percent of the required minimum amount.[65] That proposed rule would effectively have required an introducing broker to maintain adjusted net capital of $37,500 if it wanted to file only quarterly or semiannual financial reports.

A majority of the commentators addressed the proposed minimum adjusted net capital requirement for introducing brokers, and most of these commentators stated that the proposed requirement was excessive. Several alternatives were suggested, including a lower required minimum dollar amount of adjusted net capital; permitting an introducing broker to operate without any net capital of its own provided an FCM assumed complete financial responsibility for the commodity-related activities of the introducing broker under a guarantee agreement or by creating a "non-proprietary branch office" of the FCM; and reducing or eliminating the early warning level of adjusted net capital for introducing brokers.

The Commission has carefully considered the comments upon the financial requirements for introducing brokers and it has also undertaken its own review of the matter, mindful of the fact that the minimum financial requirements for introducing brokers should "effectuate the Congressional purpose that introducing brokers have a sufficient reserve of capital to remain economically viable yet . . . not be so onerous as to constitute a barrier to the entry into, or continuation in, the commodities industry."[66] The Commission also weighed Congress' statement that a purpose of minimum financial requirements for introducing brokers should be " 'to guarantee accountability and responsible conduct of [introducing brokers].' "[67] The Commission has determined, following its consideration of the comments and its own review of the issues, to make the following revisions to the proposed financial requirements in the final rules contained herein:

1. The basic minimum adjusted net capital requirement for introducing brokers will be $20,000 instead of $25,000;

2. There will be no financial early warning level of adjusted net capital for introducing brokers; the combination of

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[60] Although an AP may use the registration "transfer" provided by § 3.12a–(T) only once, an AP may also re-register as an AP of an FCM, introducing broker, CTA, or CPO by using Form 8–S (§§ 3.12(d), 3.16(d)) and as an AP of a CTA or CPO by using Form 3–R (§ 3.16(e)).

[61] *See, e.g.*, 45 FR 80845, 80490 (December 5, 1980); Interpretive Letter 76–5, Comm. Fut. L. Rep. (CCH) ¶ 20,147; Interpretive Letter 76–21, *id* ¶ 20,222. *See also* Interpretive Letter 75–12, *id.* ¶ 20,099.

[62] 45 FR 18356, 18360 (March 20, 1980); *see* 45 FR 80485, 80490 (December 5, 1980).

[63] Proposed § 1.17(a)(1)(ii), 48 FR 14933, 14960 (April 6, 1983).

[64] *See* Commission rule 170.15, 48 FR 26304 (June 7, 1983), which becomes effective on August 8, 1983, and which generally requires all FCMs to join a registered futures association, *and* NFA Bylaw 1101, which generally prohibits NFA members from doing any customer business with firms which are not members of a registered futures association.

[65] Proposed § 1.12(b)(2), 48 FR 14933, 14959 (April 6, 1983).

[66] 48 FR 14933, 14956 (April 6, 1983).

[67] 48 FR 14933, 14942 (April 6, 1983), quoting S. Rep. No. 384, 97th Cong., 2d Sess. 41 1982).

this change and the change referred to in item #1 above effectively reduces the minimum adjusted net capital required to be maintained by an introducing broker from the proposed $37,500 to $20,000;

3. An alternative adjusted net capital requirement has been adopted which will allow an introducing broker to operate without any net capital of its own if it enters into a guarantee agreement with an FCM;

4. An introducing broker or applicant therefor will be able to include as a current asset for purposes of computing net capital 50 percent of the value of a guarantee or security deposit with an FCM which carries or intends to carry accounts for the customers of the introducing broker; and

5. An introducing broker or applicant therefor which is also a country elevator will have the option of complying with financial reporting requirements by filing a copy of a financial report prepared by a grain commission firm.

The Commission also wishes to emphasize the fact that "introducing broker" is a new registrant category, and that the Commission will monitor closely the appropriateness of the minimum financial requirements for introducing brokers and make adjustments as necessary.

B. Basic Minimum Adjusted Net Capital and Related Financial Reporting Requirements

The basic minimum adjusted net capital requirement for introducing brokers is effectively $20,000 or, if the introducing broker is also a securities broker or dealer, any higher amount of net capital required by the SEC.[68] An introducing broker which is operating pursuant to a guarantee agreement with an FCM, which will be described more fully below, need not maintain any net capital of its own, unless it is also a securities broker or dealer, in which case it must maintain the minimum amount of net capital required by the SEC.[69]

Any particular firm's minimum capital requirement will therefore depend upon whether it is also a securities broker or dealer and if so, whether it engages in a general securities business or is an introducing securities broker, as well as whether the firm has entered into a guarantee agreement. If the introducing broker or applicant for registration as an introducing broker is not engaged in the securities business, its minimum adjusted net capital requirement is $20,000 if it has not entered into a guarantee agreement with an FCM, and zero if it has entered into such an agreement. If the firm is engaging in a general securities business, its adjusted net capital requirement is $25,000 whether or not it has entered into a guarantee agreement with an FCM, because the SEC minimum requirement for such a firm is $25,000. If the firm is an introducing securities broker, its minimum adjusted net capital requirement is $20,000 if it has not entered into a guarantee agreement with an FCM (the higher CFTC requirement), and $5,000 if it has entered into such an agreement (the higher SEC requirement).

With respect to financial reporting forms, the Commission stated, in its release announcing the proposed rules for introducing brokers, that:

> 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 [designated self-regulatory organizations], 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 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.[70]

The Commission received a few comments on this issue, some of which suggested that introducing brokers be permitted to file a "short form" financial report. The Commission has reevaluated this matter and has determined that an introducing broker will generally be required to use form 1–FR for its financial reporting, for the reasons set forth above.[71]

The Commission has, however, modified the instructions to form 1–FR to make it clear that certain items do not apply to introducing brokers, including the items relating to customer funds, customer accounts and non-customer accounts. For instance, introducing brokers are not required to complete the schedule of segregation requirements and funds on deposit in segregation, since introducing brokers will obviously have none. Those introducing brokers which use form 1–FR should complete the form in accordance with the instructions thereto. The additional instructions regarding items which do not apply to introducing brokers, as well as the additional filing options which are available, should alleviate the financial reporting burden on introducing brokers. The Commission also notes in this regard that several FCMs do not have entries for many of the items on the form 1–FR.[72]

The Commission is adopting, as proposed, an amendment to § 1.10(h) to permit an introducing broker or applicant for registration as an introducing broker which is also registered with SEC as a broker or dealer to have the option of filing a copy of its Financial and Operational Combined Uniform Single Report under

[68] As the Commission stated when it established a "no-action" mechanism as an interim step for those firms which formerly were "agents" of FCMs and which have elected to become introducing brokers, such firms have until October 31, 1983 (90 days following the adoption of these rules) to achieve, and demonstrate (by means of a certified financial report), compliance with the minimum financial requirements for introducing brokers. *See* 48 FR 15890, 15892, 15893 (April 13, 1983). An applicant for registration as an introducing broker which was not formerly an "agent" of an FCM and which has not been operating pursuant to the Commission's "no-action" position for such "agents," must demonstrate compliance with the minimum financial requirements with its application for registration. The certified financial report required to be filed by an applicant for registration as an introducing broker must be filed with NFA, and a copy must be sent to the regional office of the Commission nearest the principal place of business of the applicant. Section 1.10(c).

[69] The minimum dollar amount of net capital which must be maintained by the broker or dealer which engages in a general securities business is $25,000, and an introducing securities broker or dealer must maintain $5,000. 17 CFR 240.15c3–1 (a)(1) and (a)(2) (1982). Securities brokers or dealers may have to maintain net capital in excess of the minimum dollar amount based either on their amount of aggregate indebtedness or aggregate debit items. 17 CFR 240.15c3–1 (a) and (f) (1982).

[70] 48 FR 14933, 14947–48 (April 6, 1983).

[71] As discussed more fully below, an introducing broker which is also a securities broker or dealer may file a copy of its FOCUS Report, Part II or Part IIA (*See* § 1.10(h)), and an introducing broker which is also a country elevator may file a financial report prepared by a grain commission firm in accordance with § 1.10(i), in lieu of form 1–FR. As noted above, an introducing broker operating pursuant to a guarantee agreement has no financial reporting requirement.

[72] The changes to the form 1–FR which have been necessitated by the amendments to the regulations discussed herein, except for the guarantee agreement, 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. The guarantee agreement is contained in what is denoted as Part B of form 1–FR, and a specimen guarantee agreement is published at the end of this release. Part A of form 1–ER previously constituted the entire form.

the Securities Exchange Act of 1934 ("FOCUS Report") in lieu of form 1–FR. If the introducing broker or applicant therefor is engaged in a general securities business, it may file a copy of the FOCUS Report, Part II; if the introducing broker or applicant therefore is a securities introducing broker, it may file a copy of the FOCUS Report, Part IIA.[73] The filing option is 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 or applicant therefor would be able to use the FOCUS Report, Part II or Part IIA, in lieu of form 1–FR, as is without modification.[74]

The Commission is also adding another financial reporting filing option, which will be available to an introducing broker or applicant therefor which is also a country elevator, but which is not also a securities broker or dealer. One commentator stated that the proposed requirement that an applicant for registration as an introducing broker file, with its initial application for registration, a form 1–FR certified by an independent public accountant, and the proposed requirement that a registered introducing broker file a form 1–FR as of the firm's fiscal year-end which is so certified, would be unduly burdensome to a firm which is a country elevator, in view of the nature of a country elevator's primary business and the fact that most country elevators are located in rural areas and most certified public accountants are located in metropolitan areas. The commentator also stated that country elevators frequently provide the best way for farmers to hedge their grain sales, an important function of futures markets, and that such market participation should not be eliminated.

The commentator proposed an alternative financial reporting requirement for an introducing broker or applicant therefor which is also a country elevator, based on the requirement of the Commodity Credit Corporation of the United States Department of Agriculture for financial statements submitted pursuant to a Uniform Grain Storage Agreement.[75] Upon review of that comment letter, and following discussions between Commission staff and staff of the United States Department of Agriculture, the Commission has determined to adopt the commentator's suggested alternative in essentially the form presented. The financial statements submitted pursuant to a Uniform Grain Storage Agreement may be submitted in lieu of form 1–FR provided that all information which is required to be furnished on and submitted with form 1–FR is provided with such financial statements, including a statement of the computation of the minimum capital requirements pursuant to § 1.17. Also, the country elevator's balance sheet must be presented in a format as consistent as possible with the form 1–FR, and a reconciliation must be provided reconciling such balance sheet to the statement of the computation of the minimum capital requirement pursuant to § 1.17. Section 1.10(i).[76]

Section 1.10(b)(1) generally requires introducing brokers, as well as FCMs, to file financial reports on a quarterly basis, with the report filed as of the firm's fiscal year-end certified by an independent public accountant. However, § 1.10(b)(3) and § 1.52 permit the filing of financial reports on a semiannual basis if the rules of a firm's designated self-regulatory organization so provide. As stated above, the Commission assumes that all introducing brokers will join the NFA. The Commission, however, has also amended § 1.52(a), as discussed more fully below, to require contract markets which elect to establish a category of membership for introducing brokers to adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for its member introducing brokers, and thereby to become an introducing broker's designated self-regulatory organization. If an introducing broker's designated self-regulatory organization adopts rules which are approved by the Commission to permit the filing of semiannual, rather than quarterly, financial reports by member introducing brokers, such introducing brokers which are not operating pursuant to a guarantee agreement would only have to file financial reports on a semiannual basis. Otherwise, quarterly financial reports will be required.

The Commission had assumed when it proposed rules for introducing brokers that, under present circumstances, only the NFA would conduct financial surveillance of introducing brokers, and § 1.52(a) was proposed to be amended to require only self-regulatory organizations other than a contract market (*i.e.*, NFA) to adopt and submit for Commission approval rules perscribing minimum financial and related reporting requirements for all of its members who are registered introducing brokers. *See* 48 FR 14933, 14964 (April 6, 1983). One contract market addressed this matter by stating:

> We commend the Commission for proposing to amend Regulation § 1.52 to require self-regulatory organizations *other than* contract markets to adopt and submit for Commission approval minimum financial and reporting requirements for introducing brokers. As the Commission realizes, contract markets may not find it cost-effective and efficient to undertake financial surveillance of the few introducing brokers who may be members of the contract market, while registered futures associations will have large numbers of members who are introducing brokers, and, therefore, can perform these functions much more efficiently. However, [we believe] that the Commission should make it clear that contract markets may, in their discretion, adopt financial and reporting requirements for introducing brokers who are members of those contract markets. (Emphasis in original.)

In light of this comment, the Commission has determned to adopt further amendments to § 1.52(a) which state that each contract market which elects to have a category of membership for introducing brokers must adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for its member introducing brokers. No contract market is required to have an introducing broker membership category. However, a contract market

[73] 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) has been clarified to allow any FCM or introducing broker, or any applicant for registration in either category, to file Part II or Part IIA of the FOCUS Report, as appropriate.

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

[75] The Unites Stated Department of Agriculture regulations relating to becoming and remaining an approved grain warehouse are set forth at 7 CFR 1421.5551–1421.5558 (1983).

[76] In connection with the additional filing option available to an introducing broker or applicant therefore which is also a country elevator, the Commission has added § 145.(d)(1)(i)(E) and § 147.3(b)(4)(i)(A)(*5*) to its regulations under the Freedom of Information Act and Government in the Sunshine Act, respectively. Those new paragraphs provide for nonpublic treatment of the financial report filed pursuant to §1.10(i) to the same extent as presently provided for the form 1–FR and the FOCUS Report, Part II. 17 CFR 145.5(d)(1)(i)(B) and (C) and 147.3(b)(4)(i)(A)(*2*) and (*3*) (1982).

which elects to have an introducing broker membership category must adopt and submit for Commission approval financial rules for such members within 90 days of establishing such a membership category.

To recapitulate, the minimum adjusted net capital, financial early warning, and financial reporting requirements for an introducing broker or applicant for registration as an introducing broker can be summarized by reference to the following chart:

FINANCIAL REQUIREMENTS FOR INTRODUCING BROKERS OR APPLICANTS THEREFOR

Is the firm also a securities broker or dealer?			Has the firm entered into a guarantee agreement?		Is the firm also a country elevator?		Then the firm has the following requirements:		
General	Introducing	Neither	Yes	No	Yes	No	Minimum adjusted net capital	Early warning level	Financial reporting
		X		X		X	$20,000	20,000	Form 1-FR.[1]
		X	X			X	0	0	None.[1]
		X		X	X		20,000	20,000	Form 1-FR or Grain Commission Firm Report.[1]
		X	X		X		0	0	None.[1]
X				X		X	25,000	30,000	Form 1-FR or Focus, Part II.[1]
X			X			X	25,000	30,000	Focus, Part II.
X				X	X		25,000	30,000	Form 1-FR or Focus, Part II.
X			X		X		25,000	30,000	Focus, Part II.
	X			X		X	20,000	20,000	Form 1-FR or Focus, Part IIA.[1]
	X		X			X	5,000	6,000	Focus, Part IIA.[1]
	X			X	X		20,000	20,000	Form 1-FR or Focus, Part IIA.
	X		X		X		5,000	6,000	Focus, Part IIA.

[1] Most likely combinations.

C. Alternative Adjusted Net Capital Requirement

Several commentators suggested an alternative to the proposed minimum adjusted net capital requirement for introducing brokers whereby an FCM carrying the accounts of the customers of an introducing broker would assume full responsibility for the obligations of the introducing broker. The introducing broker would register as such and would be subject to fitness standards, recordkeeping requirements and other regulations affecting introducing brokers, but would not have to maintain any of its own net capital. This approach, where an FCM would be expressly responsible for the obligations of the introducing broker, which is roughly equivalent to the situation which prevailed under the former system of "agents" of FCMs, was referred to by various commentators as a "guarantee agreement plan" or the "non-proprietary branch office" concept.

The Commission has considered those comments carefully and, although the Commission has revised the proposed basic minimum adjusted net capital requirement as described above, the Commission recognizes that there may be firms, particularly among the former "agents" of FCMs, which wish to operate as introducing brokers without maintaining any of their own net capital and without having the responsibility for submitting certified financial statements or filing other financial reports. The Commission has therefore adopted an alternative net capital requirement for introducing brokers which provides that if an introducing broker is operating pursuant to a guarantee agreement with an FCM, the introducing broker will not have to maintain any of its own net capital, unless the firm is also a securities broker or dealer, in which case the net capital requirements of the SEC would apply. Sections 1.3(nn) and 1.17(a)(2)(ii). An introducing broker operating pursuant to a guarantee agreement with an FCM (unless the firm is also a securities broker or dealer) is exempt from the financial reporting requirements of § 1.10, the requirements for notification of undercapitalization or of a material inadequacy in the accounting system contained in § 1.12, the requirements pertaining to qualifications and reports of independent public accountants in § 1.16, and the financial recordkeeping requirements of § 1.18.

The guarantee agreement is contained in Part B of form 1-FR, which is available from the Commission upon request, and it provides that the FCM which is a party thereto guarantees performance by the introducing broker of, and shall be jointly and severally liable for, all obligations of the introducing broker under the Act and the rules, regulations and orders promulgated thereunder. A specimen copy of the guarantee agreement is printed at the end of this release.

The purpose of the guarantee agreement is to enable the introducing broker to meet the alternative adjusted net capital requirement, and to protect the customers of the introducing broker. An FCM which enters into such an agreement is not precluded from entering into a separate indemnification agreement with the introducing broker whereby the introducing broker agrees to indemnify the FCM for obligations which the FCM satisfies under the guarantee agreement, nor is the FCM precluded from seeking contribution from the introducing broker.[77] The Commission also assumes that an FCM which enters into a guarantee agreement with an introducing broker will require the introducing broker to introduce all of its accounts to that FCM.[78] However, these matters are left to the parties to arrange.

The Commission believes that the alternative adjusted net capital requirement embodied in the guarantee agreement is consistent with two of the factors upon which an adjusted net capital requirement for introducing brokers should be based: (1) Insuring that introducing brokers are not judgment proof; and (2) providing coverage for potential liabilities of introducing brokers arising from business operations and customer relations.[79] The Commission believes that the other factors to which it has previously referred with respect to establishing an adjusted net capital requirement for introducing brokers (encouraging introducing brokers to employ the appropriate personnel to

[77] The accounting treatment of the guarantee agreement and of an indemnification agreement are discussed below.

[78] An introducing broker which meets the basic minimum adjusted net capital requirement may have its customers' accounts carried by more than one FCM.

[79] 48 FR 14933, 14942 (April 6, 1983).

safeguard their stake in their businesses, insuring that introducing brokers have a sense of commitment and obligation to their businesses sufficent to produce responsible and reliable operations, and strengthening supervision of, and responsibility for, sales practices) have been accounted for to a large extent by the Commission's amendment to § 166.3, which is discussed more fully below, to explicitly require introducing brokers to supervise those acting on their behalf.

D. Requirements for and Conditions Affecting a Guarantee Agreement

The requirements for a guarantee agreement are set forth in §1.10(j). As noted above, the prescribed form of a guarantee agreement which will satisfy the alternative adjusted net capital requirement set forth in § 1.17(a)(2)(ii) is contained in Part B of form 1–FR. The names of the introducing broker and the futures commission merchant must be filled in and the agreement must be dated and signed, in a manner sufficient to be binding under local law, by an appropriate person on behalf of each party. Each signature must be accompanied by evidence that the signatory is authorized to enter the agreement on behalf of the firm. An appropriate person for purposes of signing the guarantee agreement, as well as any other notice relating to the agreement, shall be the proprietor, if the firm is a sole proprietorship; a general partner, if the firm is a partnership; and either the chief executive officer or the chief financial officer, if the firm is a corporation. The agreement may be signed in counterparts. Section 1.10(j)(1).

Any registered FCM can enter into a guarantee agreement with an introducing broker, except for an FCM which knows or should have known that its adjusted net capital is below the financial early warning level, or an FCM against whom is filed, on or after the effective date of § 1.10(j), an adjudicatory proceeding brought by or before the Commission pursuant to Sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act.[80] Section 1.10(j)(2). Those prohibitions only prevent an FCM from signing a new guarantee agreement, and the occurrence of either event does not abrogate existing guarantee agreements or relieve an FCM from any liability on an existing agreement. Also, the prohibition contained in § 1.10(j)(2)(ii), relating to adjudications, applies prospectively only, that is, to actions filed after the effective date of § 1.10(j). Thus, an FCM with an action or actions pending against it, all of which were filed prior to such effective date, may currently enter into a gurantee with an introducing broker.

A guarantee agreement submitted in connection with an initial application for registration as an introducing broker shall become effective upon the granting of registration to the introducing broker, and a guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties. Such date must be stated in the agreement. Section 1.10(j)(3).

A guarantee agreement will expire if the introducing broker fails to renew its registration, or if the introducing broker's registration is suspended, revoked or withdrawn, as of the date of such failure, suspension, revocation or withdrawal. A guarantee agreement will also expire if the FCM fails to renew its registration,[81] or if the FCM's registration is suspended or revoked,[82] but under any of those circumstances, the expiration of the guarantee agreement does not become effective until 30 days after such failure, suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization. Section 1.10(j)(4). The purpose of that 30-day period is to permit the introducing broker that period of time to either raise its own net capital in order to meet the basic adjustment net capital requirement (*i.e.*, $20,000), or to enter into a new guarantee agreement with another FCM. During that 30-day period, the introducing broker is still a party to a guarantee agreement which remains in effect, so the introducing broker will not be considered undercapitalized. *See* § 1.17(a)(2)(ii). However, since the FCM's registration is no longer in effect during that 30-day period, the FCM cannot do business as an FCM, and since the introducing broker probably would only have had its customers' accounts carried by that FCM, the introducing broker will probably not be able to do business as an introducing broker either. There should therefore be no additional liability created for the FCM during that 30-day period. An introducing broker will have a similar 30-day period in which to either raise the required minimum amount of adjusted net capital or to enter into a new guarantee agreement with another FCM without being considered undercapitalized if the FCM, for good cause shown,[83] gives written notice at any time of its intention to terminate the guarantee agreement. Section 1.10 (j)(5)(ii) and (j)(8)(ii).

A guarantee agreement may also be terminated by mutual written consent of the parties, by either party giving written notice of its intention to terminate the agreement at least 30 days prior to the proposed termination date (no good cause need be shown in that case), or by the introducing broker, for good cause shown, giving written notice of its intention to terminate the guarantee agreement. Section 1.10(j)(5).

If the guarantee agreement does not expire or is not terminated in accordance with the provisions of § 1.10(j) (4) or (5), it shall remain in effect indefinitely. The Commission wishes to make clear that the termination of a guarantee agreement by an FCM or by an introducing broker, or the expiration of such an agreement, does not relieve any party from any liability or obligation arising from acts or omissions which occurred during the term of the agreement. Section 1.10(j)(6).

An introduing broker or applicant therefore may only enter into a guarantee agreement with an FCM which carries or intends to carry accounts for the customers of the introducing broker, and an introducing broker may not simultaneously be a party to more than one guarantee agreement. However, an introducing broker which is a party to an existing agreement which is about to be terminated or is about to expire could enter into a new agreement which would become effective after the existing agreement is terminated or after it expires. Section 1.10(j)(7). Such a new guarantee agreement must be filed with the introducing broker's designated self-regulatory organization (with a copy to the regional office of the Commission nearest the principal place of business of the introducing broker) on or before 10 days prior to the effective date of the

[80] 7 U.S.C. 9, 13b, 13a–1, 13a–2, 12a or 13 (1976 & Supp. V 1981), *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97–444, sections 219, 220, 221, 223, 224, and 225, 96 Stat. 2308–09, and 2310–18 (1983).

[81] An FCM's registration will most likely not be coextensive with that of an introducing broker, since an FCM's registration expires as of March 31 of each year (§ 3.2(d)), and it is anticipated that introducing brokers will be registered for a period of approximately one year from the granting of registration.

[82] With respect to an FCM seeking to withdraw its registration, a request for withdrawal of registration by an FCM which is a party to a guarantee agreement must be accompained by a statement that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) not more than thirty days after the filing of the request for withdrawal. *See* § 3.33(b)(7)(vi).

[83] Examples of good cause would include a material change in the ownership, management or control of the introducing broker, or the filing by the Commission of an adjudicatory proceeding against the introducing broker.

termination or expiration of the existing agreement, or at such other period of time as the Commission and the designated self-regulatory organizations of the introducing broker and of the FCM which is a party to the new agreement may allow for good cause shown. Another alternative would be for the introducing broker to raise its own net capital. If the introducing broker chose to do so, it would have to file a form 1–FR (uncertified) with the introducing broker's designated self-regulatory organization (with a copy to the regional office of the Commission nearest the principal place of business of the introducing broker) on or before 10 days prior to the effective date of the termination or expiration of the existing agreement, or at such other period of time as the Commission and the introducing broker's designated self-regulatory organization may allow for good cause shown. If the introducing broker files such form 1–FR, the introducing broker must also file a form 1–FR, certified by an independent public accountant, as of the day following the date of termination or expiration of the guarantee agreement. The form 1–FR certified by an independent public accountant must be filed with the introducing broker's designated self-regulatory organization (with a copy to the regional office of the Commission nearest the principal place of business of the introducing broker) not more than 45 days after the date for which the report is made. If the introducing broker does not enter into a guarantee agreement with a new FCM, and does not raise its own net capital, it must cease doing business as an introducing broker on or before the effective date of the termination or expiration of the existing guarantee agreement. Section 1.10(j)(8).

To recapitulate the mechanics of the guarantee agreement, consider what would happen if firm "IB," an applicant for registration as an introducing broker, and futures commission merchant "FCM" sign a guarantee agreement on September 1, 1983, which is filed with NFA on that date together with IB's registration application.[84] If IB is granted registration as an introducing broker on November 1, 1983, the guarantee agreement becomes effective on that date. Any of the following circumstances may occur, with the indicated consequences:

1. On December 1, 1983, FCM's adjusted net capital falls below the early warning level—the agreement remains in effect (FCM may not enter into any new agreements while its adjusted net capital remains below the early warning level).

2. On December 1, 1983, the Commission brings an adjudicatory proceeding against FCM—the agreement remains in effect (FCM may not enter into any new agreements while the proceeding is pending).

3. On December 1, 1983, IB's registration is suspended or revoked—the agreement expires as of December 1, 1983.

4. On December 1, 1983, IB files a request for withdrawal of its registration, which becomes effective on December 31, 1983—the agreement expires as of December 31, 1983.

5. On March 31, 1984, FCM fails to renew its registration, or such registration is suspended or revoked—the agreement expires as of April 30, 1984 (provided FCM's registration has not been renewed or reinstated prior to April 30, 1984).

6. On May 1, 1984, FCM and IB mutually consent to terminate their agreement—the agreement terminates as of the date agreed upon by the parties.

7. On May 1, 1984, IB or FCM notifies the other party of its intention to terminate the agreement as of May 31, 1984—the agreement terminates as of May 31, 1984 (the notice could specify a termination date later than May 31, 1984, but termination could not be sooner than that date).

8. On May 1, 1984, FCM notifies IB of its intention to terminate the agreement on May 2, 1984 for good cause shown—the agreement terminates as of May 2, 1984, but IB will not be considered undercapitalized unless it does not enter into a new guarantee agreement, or it does not raise the required minimum dollar amount of adjusted net capital ($20,000), by June 1, 1984.

9. On May 1, 1984, IB notifies FCM of its intention to terminate the agreement on May 2, 1984, for good cause shown—the agreement terminates on May 2, 1984.

10. On October 31, 1984, IB fails to renew its registration—the agreement expires as of October 31, 1984.

To reiterate, the following events have the following results with respect to a guarantee agreement:

Event	Result
1. FCM's adjusted net capital falls below early warning level.	Agreement remains in effect (FCM can enter into no new agreements).
2. Proceeding instituted against FCM.	Agreement remains in effect (FCM can enter into no new agreements).
3. IB's registration is suspended, revoked or withdrawn or IB fails to renew its registration.	Agreement expires as of date of suspension, revocation, withdrawal or failure.
4. FCM's registration is suspended or revoked or FCM fails to renew its registration.	Agreement expires 30 days after such suspension, revocation or failure.
5. Mutual consent to termination.	Agreement terminates as of mutually agreed upon date.
6. IB wants to terminate: a. No good cause shown; b. Good cause shown.	a. Agreement terminates upon 30 days notice to FCM. b. Agreement terminates as of date stated by IB.
7. FCM wants to terminate: a. No good cause shown; b. Good cause shown.	a. Agreement terminates upon 30 days notice to IB. b. Agreement terminates as of date stated by FCM, but IB not considered undercapitalized for 30 days thereafter.
8. None	Agreement continues indefinitely.

E. Computation of Adjusted Net Capital

The minimum amount of adjusted net capital which must be maintained by an introducing broker which is not operating pursuant to a guarantee agreement is set forth in § 1.17(a)(1)(ii), which is discussed above. In order for such an introducing broker to compute its actual adjusted net capital and thus determine whether it is complying with the minimum adjusted net captial requirement, the introducing broker will have to follow the provisions set forth in the remainder of § 1.17. Most of those provisions have not been amended and will 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 which do not intend to operate pursuant to a guarantee agreement with an FCM should become familiar with all aspects of § 1.17.[85] A description of the provisions of § 1.17, relating to such items as definitions for purposes of § 1.17, current assets, liabilities, adjustments to net capital (also known as "safety factor charges" or "haircuts"), the debt-equity requirement, withdrawal of equity capital, consolidation of assets and liabilities of a subsidiary or affiliate, and subordination agreements, was set forth in the release announcing the proposed rules for introducing brokers. 48 FR 14933, 14943–47 (April 6, 1983).

The final rules governing the computation of adjusted net capital for introducing brokers contain a few differences from the proposed rules. The

[84] A copy of the guarantee agreement must also be sent to the regional office of the Commission nearest the principal place of business of the applicant for registration as an introducing broker.

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

principal difference is a new § 1.17(c)(2)(ix), which will permit an introducting broker or applicant for registration as an introducing broker to include as a current asset for purposes of computing net capital 50 percent of the value of a guarantee or security deposit with an FCM which carries or intends to carry accounts for the customers of the introducing broker.[86] The remaining 50 percent will be treated as a noncurrent asset. Several commentators expressly objected to the fact that introducing brokers, like FCMs, would generally be able to include only "unencumbered" assets when computing net capital. Particular attention was directed to a guarantee or security deposit which FCMs may require from an introducing broker before they will agree to carry accounts of the introducing broker's customers. (Many FCMs required such a deposit from their former "agents," and some of these were substantial.) The Commission has reevaluated this matter and has determined to revise its proposal, which would have prohibited an introducing broker from treating any portion of a guarantee or security deposit with an FCM as a current asset, so that an introducing broker may treat 50 percent of such a deposit as a current asset, even though it could be considered encumbered to some extent.[87] The Commission also wishes to point out that a free credit balance in an introducing broker's trading account carried by an FCM is considered to be a current asset of the introducing broker.

The other differences between the proposed rules and the final rules concerning computation of adjusted net capital for introducing brokers relate to the adjustements to net capital for undermargined accounts. Since the Commission has determined, for the reasons discussed in the next two paragraphs, that an introducing broker may not carry proprietary accounts [88] or foreign futures accounts for customers, the haircuts for undermargined accounts will apply only to FCMs. *See* § 1.17(c)(5)(viii) and (ix).

The Commission's proposals would have placed no restrictions on an introducing broker with respect to trading for its own account, carrying and clearing proprietary accounts or soliciting or accepting orders and funds from customers for purposes of trading in foreign futures. However, the Commission expressed its concern 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. In its proposal, the Commission expressed concern that the introducing broker could have a much greater financial exposure if it chose to engage in some or all of those activities, and also noted that the SEC is more restrictive on those matters with respect to securities introducing brokers.[89] For all of these reasons, the Commission specifically requested comment on whether the permissible activities of introducing brokers should be further restricted.[90]

Most of the comments received on this issue favored no restrictions on the ability of an introducing broker to trade for its own account, to carry and clear proprietary accounts, or to solicit or accept orders and funds from customers for purposes of trading in foreign futures. However, two commentators expressed their opposition to permitting introducing brokers to engage in activities beyond trading for their own account. One of those commentators stated that "introducing brokers should be prohibited from carrying *any* account, including house or other proprietary accounts and non-regulated commodity accounts for trading in foreign futures contracts." (Emphasis in original.) The commission has considered these comments and has determined that while there will be no restrictions upon an introducing broker trading for its own account,[91] an introducing broker will not be permitted to carry proprietary accounts or accounts in foreign futures, for the reasons referred to in the preceding paragraph. Section 1.57(b).

F. Accounting Treatment for Indemnification and Guarantee Agreements

In its release containing the proposed rules for introducing brokers, the Commission stated the following with respect to indemnification agreements between introducing brokers and FCMs:

> 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 acutal liability, the introducing broker would have to estimate the amount of actual liability and record that amount on its books. 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 agreements.[92]

The commentators who addressed themselves to this issue generally supported the Commission's proposed accounting treatment of an indemnification agreement, and the Commission has determined to treat such an agreement in accordance with its proposal. The Commission has also determined that an FCM must treat a guarantee agreement in a similar manner. The FCM must reflect the fact that it has entered into a guarantee agreement with one or more introducing brokers in a footnote to its financial statements, but while the FCM's liability under a guarantee agreement remains contingent, it need not affect directly the FCM's computation of net capital.

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[86] The security or guarantee deposit could be accumulated from commissions due the introducing broker which are withheld by the FCM, provided the introducing broker and the FCM follow the provisions relating to withheld commissions which are set forth in the Division of Trading and Markets Financial and Segregation Interpretation No. 3—Secured Receivables. *See* 1 Comm. Fut. L. Rep. (CCH) ¶ 7113 (May 9, 1979). Fifty percent of such withheld commissions could be treated as a current asset of the introducing broker.

[87] By comparison, FCMs may not include guarantee deposits with other FCMs as current assets; only guarantee deposits with clearing organizations and stock in clearing organizations to the extent of its margin value may be treated as current assets by FCMs. Section 1.17(c)(2)(viii).

[88] Of course, an introducing broker and any persons who would be considered proprietary (*see* 17 CFR 1.3(y) (1982) with respect to the introducing broker may trade their own accounts on a fully-disclosed basis with an FCM. If the FCM has no ownership interest in the introducing broker, and there is no other relationship which is referred to in § 1.3(y) between the introducing broker, or persons employed by the introducing broker, and the FCM any such account should be treated as a customer account by the FCM.

[89] 17 CFR 240.15c3-1(a)(2) (1982).

[90] 48 FR 14933, 14934, 14944, (April 6, 1983).

[91] Unless the introducing broker has membership trading privileges at the exchange where its trades are executed, its account will be carried by an FCM. If an introducing broker does trade for its own account, it will be subject, as is an FCM which trades for its own account, to the safety factor charges for those positions which are set forth in paragraphs (c)(5) (x), (xi) and (xii) of § 1.17.

[92] 48 FR 14933, 14944 (April 6, 1983) (footnote omitted).

However, if a contingent liability appears likely to become an actual liability, the FCM must estimate the amount of actual liability and record that amount on its books.

The Commission wishes to note one other matter with respect to the accounting treatment of a guarantee agreement. Section 1.17(f) (17 CFR 1.17(f) (1982)) sets forth the provisions relating to consolidation of financial statements, and states in pertinent part as follows:

> Every applicant or registrant, in computing its net capital . . . must . . . consolidate in a single computation, assets and liabilities of any subsidary or affiliate for which it guarantees, endorses or assumes directly or indirectly the obligations or liabilities. The assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the applicant or registrant may also be so consolidated if an opinion of counsel is obtained as provided for in paragraph (f)(2) of this section.

The mere fact that an FCM enters into a guarantee agreement with an introducing broker will not, without more, trigger the provisions of § 1.17(f). Consolidation is only made with a firm which is a subsidiary or affiliate, which means that there must be some type of common ownership interest.[93] If the FCM has not ownership interest in the introducing broker, consolidation is not required, even if the FCM enters into a guarantee agreement with the introducing broker.[94] The guarantee agreement is not a financial payment guarantee, but is instead of the nature of a performance guarantee.

G. Financial Early Warning System

The Commission proposed to amend § 1.12(b) so that the financial early warning system for introducing brokers would be essentially similar to the system which applies to FCMs. The proposed early warning level of adjusted net capital for introducing brokers was the greater of: (1) 150 percent of the required minimum dollar amount which, based on the proposed required minimum dollar amount of adjusted net capital of $25,000, would have been $37,500, or (2) if the firm were also a securities broker or dealer, any higher amount required by the SEC's early warning system.

If the Commission's proposal had been adopted, an introducing broker which failed to maintain adjusted net capital equal to or in excess of the early warning level would have been required to make the same filings as an FCM. The firm would have been required 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 been required 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 had elapsed during which the firm's adjusted net capital was at all times equal to or in excess of the early warning level. Each of those financial reports would have been required to have been filed within thirty calendar days after the end of the month for which the report was being made.[95]

The Commission recognized when it proposed a financial early warning system for introducing brokers which would be similar to that which applies to FCMs that there are certain significant differences between the operations of FCMs and introducing brokers, and the Commission therefore requested specific comments on this matter. Commentators were requested to consider the following factors. The financial 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 introduces customer accounts to a clearing broker.[96] 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 were to establish 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 divert regulatory resources to firms which do not necessarily require enhanced surveillance from those firms which may require closer scrutiny. Commentators were also requested to address whether other elements of the early warning system, relating to maintenance of books and records and to material inadequacies in the accounting system, should apply to introducing brokers.

The Commission also suggested certain alternatives to its proposed early warning system for introducing brokers. One alternative set forth was an early warning level of adjusted net capital of 120 percent of the required minimum dollar amount, rather that the proposed 150 percent, which would be the same as it is for introducing securities brokers. Another alternative presented was to require only notice of undercapitalization, and to have no higher early warning level of adjusted net capital for introducing brokers. 48 FR 14933, 14951–52 (April 6, 1983).

One commentator supported the proposed early warning level of adjusted net capital for introducing brokers of 150 percent of the required minimum amount, but the majority of commentators addressing this issue were opposed to that. Various alternatives were presented by commentators. The commentator who supported the 150 percent early warning level also suggested that §§ 1.16(e)(2) and 1.12(d) be revised to require introducing brokers to notify any FCM

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[93] This meaning of the term affiliate is also relevant to the use of that term in § 1.3(y) regarding proprietary accounts.

[94] FCMs will be required to list the names of all introducing brokers with which they have entered into guarantee agreements that are currently in effect at the end of the Statement of the Computation of the Minimum Capital Requirements on form 1–FR.

[95] Several commentators objected to what they described as a requirement for "monthly audits" of introducing brokers. The Commission never proposed such a requirement. An introducing broker which is not operating pursuant to a guarantee agreement must submit a certified financial report with its application for registration and, once registered, a certified year-end financial report. These requirements are the same as those applicable to FCMs. An introducing broker operating pursuant to a guarantee agreement will not need to file certified financial reports, and a special provision is available to an introducing broker which is also a country elevator. Section 1.10(i). No monthly audits are required for any introducing broker, nor were any monthly audits proposed. In addition, no monthly financial reports will be required because the financial early warning provision of § 1.12(b) is not being adopted for introducing brokers. If that provision had been adopted, *uncertified* monthly financial reports would have been required for those introducing brokers whose adjusted net capital was below the early warning level.

[96] 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 if 5 percent of ADI.

carrying accounts introduced by the introducing broker of any material inadequacies discovered by the introducing broker or by its independent public accountant. Two other commentators also expressed support for requirement that notice of a material inadequacy be provided to the carrying FCM. One of those two other commentators also favored requiring the introducing broker to notify its carrying FCMs when it became undercapitalized. One commentator suggested that the early warning level of adjusted net capital for introducing brokers should be 120 percent of the required minimum dollar amount. Another commentator favored retaining the notification requirement if an introducing broker's adjusted net capital fell below 150 percent of the required minimum dollar amount (and extending such notification to FCMs carrying accounts of the introducing brokers), but deleting the monthly reporting requirement.

The Commission has reviewed these comments and undertaken its own reconsideration of the issue of a financial early warning system for introducing brokers. The Commission recognizes that the principal purpose of the financial early warning system is to provide time for the Commission and the self-regulatory organizations to take protective action to insure the safety of customer funds and the integrity of the marketplace,[97] and the Commission also recognizes that introducing brokers cannot accept customer funds. The Commission believes that the goal of the financial early warning system can best be achieved and the limited resources of the Commission and the self-regulatory organizations can best be utilized by limiting the application of the financial early warning systems to those firms which do accept customer funds, the FCMs. Accordingly, the Commission has determined that an introducing broker will only be required to give notice when it is undercapitalized. Section 1.12(a). No notice and no monthly financial reports will be required when an introducing broker's adjusted net capital falls below 150 percent of the required minimum amount, so § 1.12(b) will not apply to introducing brokers.[98] However, an introducing broker will have to give notice and file a follow-up written report if it fails to make or keep current the books and records required to be maintained by the regulations promulgated under the Act, or if it discovers or is notified by an independent public accountant of a material inadequacy in its accounting system, its internal accounting controls, or its procedures for safeguarding customer and firm assets. Section 1.12 (c) and (d).[99]

The Commission agrees with those commentators who suggested that notices and reports which an introducing broker is required to file pursuant to § 1.12 should also be sent to any FCM which is carrying accounts for customers of the introducing broker, and § 1.12(g) has been amended accordingly. Every notice which an introducing broker would have to file under paragraphs (a), (c) or (d) of § 1.12 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 NFA, to the designated self-regulatory organization, if any, to any FCM which is carrying to accounts for customers of the introducing broker, 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. Section 1.12(g).

H. Additional Financial Information

The Commission is delegating to the NFA the function of processing applications for registration filed by introducing brokers applicants and by applicants for registration as associated persons of introducing brokers, in accordance with statutory authority provided in the Futures Trading Act of 1982.[100] All materials relating to an application for registration must be sent to NFA including, in the case of an applicant for registration as an introducing broker, the firm's financial report. A copy of the firm's financial report must also be sent to the regional office of the Commission nearest the principal place of business of the applicant. Section 1.10(c).

The Commission is also amending § 1.10(b)(4) to make it clear that when the NFA reviews an application for registration as an introducing broker, the NFA will stand in the place of the Commission and will be able to request that such an applicant provide additional financial information. Currently, § 1.10(b)(4) allows the Commission or any self-regulatory organization of which an applicant or registrant is a member to request additional financial information. The Commission assumes that NFA will review a firm's application for registration as an introducing broker and the firm's application for membership in NFA simultaneously, and §1.10(b)(4) is being amended to eliminate any possible confusion which could arise as to whether NFA can request additional financial information from a firm applying for registration as an introducing broker which was not yet a member of NFA, and for which NFA was therefore not yet the firm's designated self-regulatory organization.[101]

I. Customer Funds

Section 1.57(a)(1) provides that each introducing broker must open and carry each customer's and option customer's account with a carrying FCM on a fully-disclosed basis (*i.e.*, the customer has an account in his own name at the FCM). The definition of the term "introducing broker" states in part that an introducing broker "does not accept any money, securities, or property (for extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts." [102] A customer or option customer of an introducing broker should transmit the funds necessary to margin his positions directly to the FCM carrying his account, even though his orders may be transmitted through the introducing broker. The Commission recognizes, however, that there may be occasions when a customer or option

[97] *See* 48 FR 14933, 14950 (April 6, 1983); 42 FR 31740 (June 22, 1977).

[98] The Commission is making a minor technical amendment to § 1.12(b), which will only affect FCMs, to correct an error made when the Commission amended § 1.12(b) last year. 47 FR 41513, 41516 (September 21, 1982). The phrase "the greatest of," which was inadvertently included at the beginning of § 1.12(b)(1), has now been correctly placed at the end of the introductory portion of § 1.12(b).

[99] A more complete description of those provisions may be found in the release announcing the proposed rules for introducing brokers. *See* 48 FR 14933, 14951 (April 6, 1983).

[100] *See* Futures Trading Act of 1982, Pub. L. No. 97-444, sections 224(6) and 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)).

[101] A firm which has applied for registration as an introducing broker and for membership in NFA, and which NFA has determined will become an NFA member upon notification to NFA that it has been granted registration by the Commission, can be considered to be a member of a self-regulatory organization for purposes of the minimum adjusted net capital requirement, and thus subject the $20,000 minimum requirement, rather than the $40,000 requirement for non-members. *See* § 1.17(a)(1)(ii) and (a)(3); *see also* 48 FR 8435 (March 1, 1983) (statement of staff interpretative position affording FCM applicants similar treatment).

[102] Futures Trading Act of 1982, Pub. L. No. 97-444, section 201(1), amending section 2(a) of the Commodity Exchange Act (to be codified at 7 U.S.C. 2); § 1.3(mm).

customer will deliver a check payable to the FCM to an introducing broker. An introducing broker will not be precluded from either depositing such a check in a qualifying bank account, or forwarding such a check to the FCM carrying the account of the customer or option customer, provided all of the following conditions are met:

(1) The futures commission merchant carrying the customer's or option customer's account authorizes the introducing broker, in writing, to receive a check in the name of the futures commission merchant, and the introducing broker retains such written authorization in its files in accordance with 17 CFR 1.31 (1982);

(2) The check is payable to the futures commission merchant carrying the customer's or option customer's account;

(3) The check is deposited by the introducing broker, on the same day upon which it is received, in a bank or trust company located in the United States in a qualifying account, or the check is mailed or otherwise transmitted by the introducing broker to the futures commission merchant on the same day upon which it is received;

(4) A qualifying account shall be deemed to be an account:

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to commodity or option customers of the futures commission merchant carrying the customer's or option customer's account;

(ii) For which the bank or trust company restricts withdrawals to withdrawals by the carrying futures commission merchant;

(iii) For which the bank or trust company prohibits the introducing broker or anyone acting upon its behalf from withdrawing funds; and

(iv) For which the bank or trust company provides the futures commission merchant carrying the customer's or option customer's account with a written acknowledgment, which the futures commission merchant must retain in its files in accordance with § 1.31, that it was informed that the funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and the regulations promulgated thereunder.[103]

An introducing broker may not handle cash, securities or property from customers or option customers, and any withdrawals which a customer or option customer wishes to make from his account must be disbursed by the FCM. An introducing broker cannot have authority to issue checks in the FCM's name, and an introducing broker cannot accept a check payable to the introducing broker from a customer or option customer. However, if an introducing broker is also a securities broker or dealer and a customer or option customer also has a securities account with the introducing broker, the customer or option customer may authorize the introducing broker to transfer funds directly from his securities account to the FCM carrying his commodity account.

[103] Section 1.57(c).

IV. Amendments to Existing Regulations

CTA/ERISA fiduciary. The Commission proposed to modify slightly the statutory definition of "commodity trading advisor" to specify that, with respect to any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), only "the named fiduciary" of such a plan would be excluded from the definition of a CTA. Proposed § 1.3(bb)(v). The Commission explained that its proposal was "intended to make clear that only those persons who meet the statutory definition of an ERISA trustee (*see* 29 U.S.C. 1002(21)) and are subject to another regulatory framework covering their fiduciary activities may be excluded" from that definition and the Commission's regulatory program for CTAs.[104] The Commission's proposal was consistent with its interpretation of the statutory use of the definite article ("the" fiduciary of an ERISA defined benefit plan), reflecting a Congressional intention to exclude such plans from the CTA definition. The Commission has now further broadened that exclusion to provide similar relief for the trustee of any such plan [105] or any fiduciary whose sole business is to advise that plan.[106]

Transaction records. The Commission is adopting amendments to § 1.35 essentially in the manner proposed. Introducing brokers are subject to the general recordkeeping requirement of § 1.35(a), which also applies to FCMs and contract market members, which requires that records be kept of all transactions relating to the introducing broker's business of dealing in commodity futures, commodity options and cash commodities. An introducing broker should have fewer transactions and fewer records relating to each transaction than an FCM due to the differences in the nature of their businesses, so an introducing broker should have a much lighter recordkeeping burden than an FCM. An introducing broker will receive customer orders, as will an FCM, and an introducing broker is required, as is an FCM, to prepare a time-stamped record of each customer order.[107] Section 1.35(a–1)(1). However, because introducing brokers are not allowed to carry customer accounts or to accept customer funds, introducing brokers are not required to prepare the financial or contract ledgers which FCMs and clearing members of contract markets are required to keep by paragraphs (b)(1) and (b)(2) of § 1.35.

The other transaction record which introducing brokers will be required to keep is a daily record or journal of all customer trades. Section 1.35(b)(3). The Commission is adopting that proposal with one minor revision. An introducing broker must include in its daily record or journal, in addition to the information set forth in § 1.35(b)(3) (i) and (ii), the FCM carrying the account for which each transaction was executed on that day. Section 1.35(b)(3)(iii). An introducing broker whose customers' accounts are carried by only one FCM may simply note that in its daily record or journal. However, an introducing broker whose customers' accounts are carried by more than one FCM must include in its daily record or journal which FCM carries the account for which each transaction was executed on that day.

Guarantee against loss. The Commission is adopting, as proposed, an amendment to § 1.56, which relates to the prohibition of guarantees against loss, so that it applies 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,[108] that introducing brokers should not be able to represent that they will guarantee a customer against loss. No comments were received on this matter.

Transmission of orders. Proposed § 1.57(a)(2) would have required an introducing broker to transmit promptly all orders either to a carrying futures commission merchant or to "a floor broker, if the introducing broker identifies its carrying futures commission merchant." One commentator responded that the Commission should also allow an

[104] 48 FR 14933, 14952 n.105 (April 6, 1983).

[105] *See* H.R. Rep. 565 (Part 1), 97th Cong., 2d Sess. 52 (1982).

[106] Fiduciaries which engage in other advisory activities may nonetheless be exempt from registration as a CTA pursuant to 4m(1) of the Act (7 U.S.C. 6m(1)). *But see* CFTC v. Savage, 611 F.2d 270, 280 (9th Cir. 1979).

[107] The only commentator who directly addressed this issue supported "the formalization of recording and maintaining customer orders" by introducing brokers.

[108] 46 FR 62841 (December 29, 1981).

introducing broker to transmit its orders to a member of a contract market if the introducing broker identified the member which will clear the trade. This commentator noted that this modification would allow an introducing broker to contact a floor broker directly even where the carrying FCM is not a clearing member of the exchange or, alternatively, would allow the introducing broker to place its orders with a member of the exchange in cases where the carrying FCM was not itself an exchange member. In each such case, however, the introducing broker would then be in a position to identify to the floor broker or the clearing member only the omnibus account of its carrying futures commission merchant, rather than the individual, fully-disclosed account of its customer or option customer. Such a practice would not only violate the provisions of § 1.35(a-1), but could lend itself to certain abusive practices such as the unlawful allocation of trades within that omnibus account. The Commission has, therefore, clarified its rule to specify that an introducing broker may transmit customer and option customer orders to a floor broker only where the introducing broker identifies the customer or option customer account at its carrying futures commission merchant and that FCM is also the clearing member with respect to the customer's or option customer's order.

CPO/CTA disclosure. The Commission is adopting, as proposed, amendments to §§ 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 also amending §§ 4.21 and 4.31 to require explicitly that CPOs and CTAs disclose any conflict of interest involving an introducing broker. The Commission did not propose such amendments because, when the proposals were announced, the Commission expressed its belief that such amendments were 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* 17 CFR 4.21(h) and 4.31(g).[109] However, in response to one commentator who requested that, for the sake of clarity, the Commission amend §§ 4.21 and 4.31 to require explicitly that CPOs and CTAs disclose any conflict of interest involving an introducing broker, the Commission has determined to so amend §§ 4.21 and 4.31.

Market surveillance. The Commission is adopting, in essentially the form proposed, amendments to certain of the regulations relating to market surveillance in order to establish for introducing brokers duties which are similar to those which presently apply to futures commission merchants. Specifically, under § 15.05, an introducing broker which introduces an account of any foreign broker or trader is deemed to be an agent of the foreign broker and its customers and an agent of the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission. Although the futures commission merchant effecting a transaction for a foreign account will also continue to be the agent of both a foreign broker and its customers and of a foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission, the Commission has amended § 15.05 because it believes that there may be instances in which service on the foreign parties can be better effected through the introducing broker. The Commission has also amended §§ 21.01, 21.02 and 21.03 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 are obligated to provide certain information upon special call, as set forth in those rules, and introducing brokers are prohibited from accepting any orders from customers who do not respond to selected special calls issued pursuant to § 21.03.

Three commentators requested that the Commission clarify the procedures it intends to follow under § 15.05(b) regarding service of communications on a foreign broker, a customer of a foreign broker or a foreign trader. Those commentators also asked specifically whether, with respect to an introduced account, an FCM which receives any communication by or on behalf of the Commission for service upon a foreign broker, a customer of a foreign broker, or a foreign trader will be deemed to have fulfilled its obligations under § 15.05(b) by transmitting the communication to the introducing broker which indroduced the account. As stated above, the Commission has amended § 15.05 so that the Commission will have the flexibility of serving a foreign party through either an FCM or an introducing broker. The Commission will determine, on a case-by-case basis, whether it believes that service can be better effected by an FCM or by an introducing broker. The Commission wishes to emphasize, however, that whether the Commission transmits a communication for service upon a foreign party to an FCM or to an introducing broker, the FCM or introducing broker is obligated to make service of that communication upon the foreign party. An FCM receiving such a communication from the Commission cannot fulfill its obligation under § 15.05(b) merely by transmitting the communication to the introducing broker, nor may an introducing broker receiving such a communication from the Commission fulfill its obligation merely by transmitting the communication to the FCM.

Two of the three commentators who commented on § 15.05(b) also commented on § 15.05(c), which requires that FCMs and introducing brokers inform foreign parties of the requirements of § 15.05 before opening accounts, or before effecting transactions in existing accounts for such foreign parties. The commentators requested a clarification as to whether, with respect to an introduced account, the FCM or the introducing broker would be responsible for informing the foreign party of the requirements of § 15.05. As is the case with the risk disclosure statements required to be furnished and acknowledged in accordance with § 1.55 and § 33.7, it is the introducing broker's responsibility, under § 15.05(c), to inform the foreign party of the requirements of § 15.05. The Commission also wishes to make it clear, however, that an FCM may not ignore the activities of an introducing broker which has introduced accounts to the FCM and, depending upon the facts in a particular case, an FCM may have some liability for such introducing broker's non-compliance with its obligations under § 15.05(c). The Commission further wishes to note that an FCM which has entered into a guarantee agreement with an introducing broker thereby guarantees performance by the introducing broker of, and shall be jointly and severally liable for, the introducing broker's obligations under § 15.05(c), among other things.

Those two commentators also requested that the Commission clarify the procedures which it intends to follow under Part 21 of the regulations with respect to special calls for information regarding introduced accounts. The Commission's procedures will be similar to those discussed above

[109] 48 FR 14933, 14953 (April 6, 1983).

relating to service upon foreign parties under § 15.05(b). The Commission will determine, on a case-by-case basis, whether it believes that the information which it seeks can be obtained more expeditiously through the FCM or through the introducing broker, and the special call will be made accordingly. The FCM or the introducing broker receiving a special call for information must respond to that call, and neither an FCM nor an introducing broker will be in compliance with the special call provisions merely by transmitting the special call for information to the other firm.

The Commission has made two other minor amendments to its market surveillance regulations. Section 17.01(b)(12) has been amended to require that when a special account which is also an introduced account is reported to the Commission for the first time, the FCM making the report must include the name and business telephone number of the introducing broker which introduced the account. Section 18.04(a)(7) has been amended to require a reporting trader to include in the statement of reporting trader, if the reporting trader has accounts introduced by more than one introducing broker which clears accounts through the same FCM, the names and locations of all such introducing brokers, as well as the name of the reporting trader's account executive at each of those introducing brokers.

Options. The Commission stated the following with respect to exchange-traded options when it announced the proposed rules for introducing brokers:

> [U]ntil 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.[110]

The Commission received a substantial number of comments on this issue, and those commentators unanimously recommended that the Commission allow introducing brokers to engage in the solicitation and acceptance of orders for exchange-traded options. Some of those commentators stated that introducing brokers should be permitted to engage in exchange-traded option activities on the condition that the FCMs carrying the accounts of the introducing brokers' customers take responsibility for the option-related activities of the introducing brokers and their associated persons until such time as the NFA is able to regulate those persons directly.

The Commission has reviewed the comments on this issue and has undertaken its own reconsideration of the matter. The Commission has determined to permit introducing brokers and their associated persons to engage in the solicitation or acceptance of orders for exchange-traded options if any of the following conditions are met:

1. The NFA, or another registered futures association, adopts rules which are approved by the Commission, to govern the commodity option related activity of its member introducing brokers;

2. A contract market of which an introducing broker is a member adopts rules which the Commission approves to govern the commodity option related activity of its member introducing brokers; [111] or

3. The introducing broker is operating pursuant to a guarantee agreement, and the FCM which is a party to that agreement is a member of a self-regulatory organization which adopts rules which the Commission approves to govern the commodity option related activity of the introducing broker which is a party to that agreement.

Section 33.3(b)(1) (ii) and (iii). The rules which are adopted and submitted for Commission approval must provide for regulation of the commodity option related activity of introducing brokers in a manner equivalent to that required of contract markets with respect to their member FCMs, and must generally incorporate the standards set forth in § 33.4 (b) and (c).[112] The Commission believes that the amendment to § 33.3(b)(1) should permit those introducing brokers which want to solicit or accept orders for exchange-traded options to do so. The Commission further believes that such an amendment is necessary to preserve the structure of the option pilot program and to retain the requirement that, in addition to the Commission, there be a self-regulatory organization with responsibility over the sales practices of all persons engaged in exchange-traded option transactions. This position is consistent with the Commission's commitment to Congress to assure that the exchange-traded option pilot program is limited so that, as required by statute, it may be regulated successfully.[113]

The Commission has adopted certain other amendments to the rules governing the pilot program in exchange-traded options. One is an amendment to § 33.4(b)(4), which concerns the rules that a self-regulatory organization must adopt regarding option customer complaints. Each self-regulatory organization participating in the exchange-traded option pilot program must adopt and submit for Commission approval a rule which states that if an FCM is carrying an option customer's account which has been introduced to it by an introducing broker, and the option customer makes a written complaint, or an oral complaint which results in or which would result in an adjustment to the account in an amount in excess of one thousand dollars, the FCM will have to record, in addition to other information, the name of the introducing broker. Section 33.4(b)(4)(ii). The FCM will not, however, have to record the name of the introducing broker's associated person who serviced the account; that will be the responsibility of the introducing broker. The Commission also wishes to note, however, that an FCM which has entered into a guarantee agreement with an introducing broker thereby guarantees performance by the introducing broker of, and shall be jointly and severally liable for, such obligation.[114]

The Commission is also amending § 33.8 to extend to introducing brokers the current requirement applicable to FCMs regarding promotional material. Introducing brokers must retain, in accordance with the provisions of 17 CFR 1.31 (1982), the general rule relating to maintenance of required books and records, all promotional material provided, either directly or indirectly, to

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[110] 48 FR 14933, 14952 (April 6, 1983).

[111] A contract may elect to create a membership category for introducing brokers, and if the contract market does so elect, it may adopt and submit for Commission approval rules to govern the commodity option related activity of its member introducing brokers. There is, however, no requirement that a contract market create a membership category for introducing brokers, and there is also no requirement that a contract market adopt and submit rules to govern the commodity option related activity of its member introducing brokers. The requirements relating to options are to be contrasted with those relating to minimum financial and related reporting requirements. *See* § 1.52(a). If a contract market elects to have a category of membership for introducing brokers, it must adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for its member introducing brokers.

[112] 17 CFR 33.4 (b) and (c) (1982), *as amended by* 47 FR 56996, 57017 (December 22, 1982).

[113] *See* Section 4c(c) of the Act (7 U.S.C. 6c(c) Supp. V 1981), *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97-444, section 206(3), 96 Stat. 2301 (1983). In keeping with the spirit of that statutory requirement, the Commission is transmitting a copy of these regulations to the appropriate Congressional oversight committees.

[114] *See also* § 1.37(a), which requires that a record be made of the person who has solicited and is responsible for each option customer's account. An FCM need only record the name of the introducing broker which has introduced an introduced account; the introducing broker must record the name of its associated person who has solicited and is responsible for the option customer's account. However, an FCM which has entered into a guarantee agreement with an introducing broker should be aware of its responsibility as referred to above.

option customers, as well as the true source of authority for the information contained therein.

With respect to dealer options, the Commission stated when it proposed rules for introducing brokers [115] that an introducing broker will not be authorized to engage in dealer option transactions conducted pursuant to the provisions of Section 4c(d) of the Act [116] and Part 32 of the Commission's regulations.[117] The Commission also noted that the Futures Trading Act of 1982 in no way altered the previously-existing statutory proscriptions on who may offer and sell dealer options to the public. Although Section 4c(d) of the Act refers specifically to FCMs as the persons authorized to offer and sell dealer options, Commission rule 32.12 allowed for the possibility that an agent of an FCM would do so. In light of this, some commentators favored permitting introducing brokers to engage in dealer option transactions. The Commission, however, does not believe it is advisable to develop rules to permit introducing brokers to offer and sell dealer options at this time. The Commission therefore has not amended Part 32 of the regulations although it may reconsider this issue at a later date.

The Commission is also adopting, as proposed, an amendment to § 1.19 which extends to introducing brokers the prohibition on granting commodity options currently applicable to FCMs, except for options which are traded on or subject to the rules of a contract market.

Option and futures disclosure. In addition to the amendments to the rules governing the pilot program in exchange-traded options discussed above (§§ 33.3, 33.4 and 33.8), the Commission has also amended the disclosure rules contained in § 33.7. Those amendments generally either add a reference to introducing brokers where there is already a reference to FCMs, or extend a disclosure requirement which currently applies only to FCMs to introducing brokers as well. *See* the introductory paragraph of § 33.7(b), and paragraphs (b)(2), (b)(2)(iii), (b)(2)(iv), (b)(2)(vii), (c), (e), (f) and (g) of § 33.7.

The Commission is also amending § 33.7(a) to read, in pertinent part, as follows (amendments are italicized):

> No futures commission merchant *or, in the case of an introduced account, no introducing broker* may open *or cause the opening of* a commodity option account for an option customer unless the futures commission merchant *or introducing broker* (1) furnishes the option customer with a separate written disclosure statement as set forth in this section and (2) receives from the option customer an acknowledgment signed and dated by the option customer that he received and understood the disclosure statement. The disclosure statement and the acknowledgment shall be retained by the futures commission merchant *or the introducing broker* in accordance with § 1.31 of this chapter. . . .

The purpose of the amendment is to make it clear that for an introduced option account, it is the introducing broker's responsibility to furnish the option customer with the required written disclosure statement, and it is also the introducing broker's responsibility to receive, and retain, and acknowledgment signed and dated by the option customer that he received and understood the disclosure statement.

The Commission has also amended § 1.55(a), relating to the disclosure statement required to be furnished in connection with the opening of a commodity futures account, in a similar fashion. Certain commentators had requested clarification on this issue. The Commission once again wishes to make it clear, however, that an FMC may not ignore the activities of an introducing broker which has introduced accounts to the FCM and, depending upon the relationship of the FCM to the introducing broker, the FCM may be liable for such introducing broker's failure to provide the disclosures required by § 33.7(a) or § 1.55(a). An example of such a relationship would be one where the FCM accepts orders directly from the customer. The Commission further wishes to note, as it stated above with respect to §§ 15.05(c), 33.4)(b)(4)(ii) and 1.37(a), that an FCM which has entered into a guarantee agreement with an introducing broker thereby guarantees performance by the introducing broker of, and shall be jointly and severally liable for, the introducing broker's disclosure obligations under §§ 15.05(c), 33.7(a) and 1.55(a), among other things.

The Commission recognizes that certain introducing brokers will be firms which were previously "agents" of FCMs. Such firms may have customers who opened accounts while such firms were "agents" of FCMs. If those customers continue to have their accounts carried by the same FCM after the former "agent" becomes registered as an introducing broker, such customers would not need to be furnished with the disclosure statements required by § 33.7 or § 1.55, provided the introducing broker obtains from the FCM, and retains in accordance with the provisions of § 1.31, the signed and dated customer acknowledgments previously executed by those customers. If the introducing broker cannot obtain the customer acknowledgments, or copies thereof, for an existing account, it must furnish the customer with new disclosure documents and receive and retain the required acknowledgments signed and dated by the customer. If the introducing broker is not required to furnish new disclosure statements to existing customers, it must notify its customers and option customers of its change in status from "agent" of an FCM to introducing broker, as required by Section 4h of the Act, which provides that:

> It shall be unlawful for any person falsely to represent such person to be a member of a contract market or the representative or agent of such member, or to be a registrant under this Act or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any contract market.[118]

Of course, when soliciting any new or prospective customers and option customers, an introducing broker must also accurately describe its status.

The Commission also recognizes that the option disclosure statement required by § 33.7 is especially detailed and comprehensive, and that it needs very few changes as a result of the inclusion within the pilot program of introducing brokers as firms which can solicit or accept option orders. *See* the introductory paragraph of § 33.7(b), as well as paragraphs (b)(2), (b)(2)(iii), (b)(2)(iv) and (b)(2)(vii) of § 33.7. Introducing brokers may, therefore, want to use the document currently being used by FCMs. This practice is acceptable because providing the required disclosures to option customers and prospective option customers is the obligation of both FCMs and introducing brokers although, with respect to introduced accounts, the disclosure obligation is the responsibility of the introducing broker in the first instance. Of course, introducing brokers may develop their own option disclosure statement to meet the requirements of § 33.7, but they may find it advantageous to provide an option disclosure statement which is

[115] *See* 48 FR 14933, 14952 (April 6, 1983).

[116] 7 U.S.C. 6c(d) (Supp. V 1981), *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97-444, section 206(4), 96 Stat. 2301 (1983).

[117] 17 CFR Part 32 (1982), *as amended by* 47 FR 56996, 57016 (December 22, 1982).

[118] Futures Trading Act of 1982, Pub. L. No. 97-444, section 210, 96 Stat. 2302-03 (1983).

substantially similar to such a statement being provided by an FCM, so long as all of the requirements of § 33.7 are met. An FCM and an introducing broker may agree contractually as to how required disclosures will be provided to option customers and prospective option customers. The Commission wishes to make it clear, however, that such an agreement will not determine the regulatory obligations of the parties, which are determined by the Act and the rules, regulations and orders promulgated thereunder.

As stated above, the option disclosure statement needs very few changes as a result of the inclusion within the pilot program of introducing brokers as firms which can solicit or accept option orders. The Commission is also aware that previously-adopted amendments to the option disclosure statement necessitated by the inclusion within the pilot program of options on physicals will ultimately require amendments to that statement prior to the commencement of trading in options on physicals. The Commission has previously taken a "no-action" position with regard to the amendments necessitated by the inclusion of options on physicals until the Commission designates one or more exchanges as contract markets for the trading of options on physicals.[119] The Commission does not believe that it is necessary for an FCM which does not carry introduced option customer accounts to amend the option disclosure statement at this time to refer to introducing brokers and to make additional amendments at a later date to reflect the inclusion of options on physicals in the Commission's option pilot program. Accordingly, the Commission has modified its no-action position referred to above, and the Commission will deem such an FCM to be in compliance with the requirements of § 33.7(a) if, subsequent to the effective date of the amendments to § 33.7 discussed herein, the FCM continues to provide to its prospective option customers an option disclosure statement that has not been amended to reflect the revisions that are made necessary by the trading of options on physicals and by the inclusion of introducing brokers as firms which can solicit or accept option orders. This no-action position will terminate, however, when the Commission designates one or more exchanges as contract markets for the trading of options on physicals. All FCMs will then be required to provide the same option disclosure statement meeting all of the requirements of § 33.7(b), irrespective of whether a particular FCM intends to offer options on physicals to its option customers and irrespective of whether a particular FCM intends to have option customer accounts introduced to it by an introducing broker. Introducing brokers can also defer including references to options on physicals in their option disclosure statement until the Commission designates one or more exchanges as contract markets for the trading of options on physicals.

Trading standards. The Commission has amended, in the form proposed, its trading standards regulations in Part 155 to make them applicable to introducing brokers. Such requirements for introducing brokers are comparable to those for FCMs. The Commission also has made minor amendments, in the form proposed, to § 155.3, which sets forth the trading standards for FCMs, to make appropriate references to introducing brokers. These matters are described more fully in the release announcing the proposed rules for introducing brokers.[120] No comments were received on these matters.

Customer protection rules. When it announced the proposed rules for introducing brokers, the Commission stated its assumption that some customers may grant discretion to introducing brokers to make trades for them.[121] The Commission therefore proposed 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, and thereby allow a customer to authorize an introducing broker or its associated person to make trades for the customer.

The Commission is adopting the amendment to § 166.2 as proposed. One commentator requested that the Commission clarify whether an FCM will be required to verify that a customer has authorized the introducing broker or an associated person of the introducing broker to effect a transaction when the FCM receives an order from the introducing broker or the associated person of the introducing broker representing that customer. Although an FCM generally will not be expected to contact the customer of an introducing broker directly to determine whether that customer has authorized the introducing broker or the associated person of the introducing broker to place an order, if the introducing broker or its associated person is engaged in unauthorized trading, depending upon all the facts and circumstances, the FCM could also be liable for defrauding the customer, or for aiding and abetting such unlawful activity by the introducing broker or its associated person.

The commentator who addressed § 166.2 also addressed § 166.3, as did five other commentators. These commentators stated that introducing brokers should expressly be required to supervise the commodity-related activities of their personnel, and that FCMs should not be required to supervise the commodity-related activities of an introducing broker which introduces accounts to the FCM, or the commodity-related activities of anyone acting on behalf of such an introducing broker. Four of those commentators also stated that §166.3 should be further amended expressly to require introducing brokers and FCMs carrying accounts for customers of introducing brokers contractually to allocate between themselves their respective responsibilities. One of those commentators further suggested that a brief description of the respective responsibilities of the introducing broker and the FCM for an introduced account should be included on monthly and confirmation statements provided to customers.

The Commission has added the word "introduced" to § 166.3 to make clear that an introducing broker, like all other Commission registrants except associated persons with no supervisory duties, must diligently supervise the commodity-related activities of persons acting on its behalf. The Commission's position with respect to the FCM's supervisory responsibilities, which is similar to its position regarding § 166.2, is that generally an FCM will not be required to supervise the commodity-related activities of an introducing broker which has introduced accounts to the FCM, or the commodity-related activities of anyone acting upon behalf of such an introducing broker. However, if it could be shown that the introducing broker were a *de facto* branch office of the FCM, or an agent of the FCM (in the common law sense of that term), the FCM would be deemed to have supervisory responsibility. Again, the result will depend upon all of the facts of a particular situation, and will necessarily need to be determined on a case-by-case basis.

[119] 47 FR 56996, 57001 (December 22, 1982).

[120] *See* 48 FR 14933, 14954 (April 6, 1983).

[121] 48 FR 14933, 14954 (April 6, 1983). The Commission further stated that such a grant of discretion would require the introducing broker to register also as a commodity trading advisor under proposed § 4.14(a)(6). As adopted, however, § 4.14(a)(6) exempts an introducing broker from the requirement to register as a commodity trading advisor if its trading advice "is solely in connection with its business as an introducing broker."

The Commission has determined not to adopt the suggestion of certain commentators that an introducing broker and the FCM carrying accounts of its customers be required to enter into agreements relating to their respective responsibilities for introduced accounts. As the Commission stated when it announced the proposed rules for introducing brokers, the Commission assumes that introducing brokers and FCMs will enter into such agreements. 48 FR 14933, 14944 (April 6, 1983). The Commission wishes to make it clear that such agreements will not determine the regulatory obligations of the parties, which are determined by the Act and the rules, regulations and orders promulgated thereunder. Such agreements, may, however, provide a basis for indemnification or contribution between the parties in the event that there is found to have been a violation of the Act or a rule, regulation or order promulgated thereunder.

The Commission also has determined not to adopt the suggestion of a commentator that a brief description of the respective responsibilities of the introducing broker and the FCM for an introduced account be included on monthly and confirmation statements provided to customers. The Commission has, however, amended §§ 1.33 and 1.46 to require each monthly statement, each confirmation statement, and each purchase-and-sale statement issued for an introduced account to show that the account for which the FCM is providing the statement was introduced to the FCM by an introducing broker, and the names of the FMC and introducing broker involved. (The Commission also is aware that FCMs often include on the confirmation and purchase-and-sale statements a telephone number to call in the event of an error on such statements. The Commission recommends that, in the case of introduced accounts, the FCM and introducing broker agree, and so advise the customer, whether errors should be reported to the introducing broker or directly to the FCM.)

The Commission wishes to note certain other issues relating to monthly, confirmation, and purchase-and-sale statements for introduced accounts. The Commission agrees with the commentator who stated that those required statements must be sent directly from the FCM carrying the account to the customer, and not simply to the introducing broker. The FCM may, in its discretion, send a copy of a statement to the introducing broker, but the primary statement must be sent directly to the customer. The Commission therefore disagrees with another commentator who stated that an FCM should be able to carry an introduced account even if the introducing broker merely provides the FCM with a number of "d/b/a" designation for the account. The obligations of § 1.37(a) apply both to FCMs and to introducing brokers. An FCM must keep a record for each account which it carries, including introduced accounts, which shows, among other things, the true name and address of the person for whom such account is carried. Similarly, an introducing broker must keep a record for each account which it introduces which shows, among other things, the true name and address of the person for whom such account is introduced. Therefore, for introduced accounts, both the FCM and the introducing broker must keep a record of the customer's name and address. Neither the FCM nor the introducing broker may contractually delegate to the other firm this obligation under § 1.37(a). An FCM will have the name and address of the customer on whose behalf it is carrying an introduced account in its records, and it must issue directly to that customer the monthly, confirmation, and purchase-and-sale statements required by §§ 1.33 and 1.46.

The Commission also has determined to adopt a new § 166.4 regarding branch offices. The Commission adopted this rule in response to a comment requesting clarification of the status of a branch office, and because the Commission has determined that such a rule will serve to further clarify the responsibility of registrants for their branch offices and, as such, will serve as a customer protection. The rule reads as follows:

> Each branch office of each Commission registrant must use the name of the firm of which it is a branch for all purposes, and must hold itself out to the public under such name. The act, omission or failure of any person acting for the branch office, within the scope of his employment or office, shall be deemed the act, omission or failure of the Commission registrant as well as of such person.

NFA rules. The Commission is adopting, in the form proposed, two amendments to 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 have been eliminated so that the new categories discussed herein, as well as any additional categories created in the future, will be included. The second amendment adds a new § 170.10 relating to proficiency examinations and permits a futures association to establish different training standards and proficiency examinations for persons registered in more than one capacity. Furthermore, if a person were exempt from registration in a particular capacity, yet performed the functions of a person registered in such capacity, a futures association can require that person to meet training standards and pass a proficiency examination related to that exempted capacity.

V. Related Matters

A. Regulatory Flexibility Act Analysis

FCMs, CPOs and floor brokers. When the Commission proposed rules relating to introducing brokers and the APs of introducing brokers, CTAs and CPOs, the Chairman certified, on behalf of the Commission and pursuant to the Regulatory Flexibility Act ("RFA"),[122] that if the regulations were promulgated as proposed, there would not be a significant economic impact on a substantial number of small entities. 48 FR 14933, 14956 (April 6, 1983). In this connection, the Commission noted its previous determination that registered FCMs and registered CPOs are not "small entities" for purposes of that Act (47 FR 18618 (April 30, 1982)) and that the requirements of the RFA therefore do not apply to those entities. The Commission further noted that 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 Act, as amended by the Futures Trading Act of 1982, and that the economic effect on floor brokers of both provisions, if adopted, would be minimal.[123] The Commission did not receive any comments with respect to the proposed fingerprinting requirement for floor brokers and it is adopting that rule as proposed. Consistent with the Commission's statements at the time it proposed increased registration fees, the Commission has continued to develop data and information with a view to determining more precisely the actual costs to the Commission of processing applications for registration. As noted above, the registration fees have been

[122] 5 U.S.C. 601 *et seq.*

[123] The Commission stated in its RFA policy statement that, with respect to floor brokers, RFA determinations should be made in the context of rule proposals specifically affecting them. 47 FR 18618, 18620 (April 30, 1982).

revised accordingly to reflect the Commission's actual costs.

Commodity trading advisors. As with floor brokers, the Commission similarly decided in its RFA 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 analyze the economic impact on CTAs of any such rule at that time.[124] In this regard, and for the same reasons stated above with respect to floor brokers, the Commission does not consider either the registration fee or the fingerprinting requirement for certain CTAs upon re-entry into the business following a lapse of registration to have a significant economic impact on such persons.

The Commission also proposed, however, to require those CTAs which are compensated either on a "per-trade" basis, or which receive a fee from an FCM for the referral of customers, to register as introducing brokers and to comply with the rules governing introducing brokers. As noted earlier in this **Federal Register** notice, this position was consistent with prior staff interpretations that persons who operated in such a manner were "agents" of FCMs. The Commission therefore proposed, in light of the legislative history of the Futures Trading Act of 1982, to require persons who continued to operate in this manner to register as introducing brokers. Specifically, the Commission stated in its proposal that it believed that it was necessary to include within the introducing broker category those CTAs which, in essence, solicit or accept customer orders on behalf of one or more FCMs in order to avoid having a category of registrants which would function in a manner similar to that of an introducing broker but which would not have any minimum capital requirements. The Commission further indicated at that time, however, that an alternative to introducing broker registration is available to those small CTAs which do business as sole proprietorships in that any such person 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 requirements) unnecessary. The Commission wishes to emphasize that this alternative is still available for those CTAs which would otherwise be required to register as introducing brokers under these rules as adopted.

More significantly, and in response to the comments received as well as its further consideration of this issue, the Commission has determined to revise the introducing broker definition to exclude from its scope a CTA which solely manages discretionary accounts pursuant to a power of attorney, regardless of whether that CTA is registered or exempt from registration as a CTA. Furthermore, the revised definition also excludes from the definition of "introducing broker" any CTA which, acting in its capacity as such, does not receive per-trade compensation. Of course, a CTA which does not come within the introducing broker definition is not required to register as such. The Commission has also reduced the need for certain persons to register in two capacities by revising its proposal so that introducing brokers who direct or guide a client's commodity interest account generally will not also have to register as CTAs. Instead, the Commission has adopted a rule which exempts an introducing broker from the requirement to register as a CTA if its trading advice is solely in connection with its business as an introducing broker.

As discussed in greater detail elsewhere in this **Federal Register** notice, the Commission believes that these modifications are consistent with the scope of the term "introducing broker" and are necessary to preclude avoidance of the scheme of regulation of introducing brokers contemplated by the Futures Trading Act of 1982. At the same time, these modifications will greatly minimize "dual registration" obligations and avoid undue regulatory burdens for those persons which do register with the Commission in both categories. Indeed, as noted in the Commission's proposal, the regulations which govern the operations and activities of CTAs and introducing brokers neither conflict nor are inconsistent. Thus, in the relatively small number of instances in which a person may be required to register as both a CTA and as an introducing broker, any overlap between the two sets of regulatory requirements would generally mean that a particular function—such as the maintenance of books and records—need not be performed twice.

Introducing brokers. The Commission proposed for purposes of the RFA and future rulemakings that introducing brokers should not be considered to be "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.[125] The Commission specifically requested comments from any firm which believed that these rules would have a significant economic impact on a substantial number of small entities. In this regard, several commentators expressed concern that the Commission's proposal could, in some circumstances, have an impact on certain small entities, such as a country elevator or a CTA which may share in brokerage commissions with an FCM on only a few commodity accounts. In accordance with the objectives of the RFA, the Commission has sought throughout this rulemaking proceeding to develop a regulatory framework for introducing brokers which is responsive to the function, purposes, and size of the entity being regulated and, as discussed below, has further evaluated that portion of its proposal that would have established a uniform policy under which introducing brokers would not be considered to be small entities in any circumstances. For the reasons set forth in this release, and in particular as discussed below, the Commission has adopted these rules to minimize any impact which might have otherwise resulted had the Commission's proposal been adopted without revision.

The Commission has decided, as with floor brokers and CTAs, to evaluate within the context of a particular rule proposal whether all or some introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on introducing brokers of any such rule at that time.[126] Specifically, the Commission recognizes that the introducing broker definition, even as narrowed to exclude certain persons,[127] undoubtedly encompasses many business enterprises of variable size.[128] The Commission therefore believes that adequate consideration of the economic impact on those introducing brokers which may be small businesses may be given only in the context of a particular rule proposal which affects such

[124] 47 FR 18618, 18620 (April 30, 1982).

[125] 48 FR 14933, 14955 (April 6, 1983). *See also* 47 FR 16618, 18619 (April 30, 1982).

[126] *See* 47 FR 18618, 18620 (April 30, 1982).

[127] For example, as noted above, the vast preponderance of CTAs which solely manage discretionary accounts are excluded from the introducing broker definition.

[128] Approximately 650 individuals and firms have applied for the Commission's "no-action" position for introducing brokers. The Commission recognizes, however, that not all of these persons will ultimately become so registered. (For example, some of those applicants have since applied for registration as an FCM. Other applicants may now determine, in light of these final rules, that registration as an introducing broker is unnecessary.) The Commission cannot, therefore, determine specifically at this time how many persons will become registered as introducing brokers.

persons. For example, a proposed rule may only provide for a prohibition on certain activities which does not impose any significant regulatory burdens or may affect only introducing brokers which engage in certain activities (*e.g.*, the marketing of exchange-traded options). Conversely, another rule proposal may establish new regulatory requirements applicable to all introducing brokers. As explained below, and throughout this release, the Commission has evaluated the impact of these rules upon introducing brokers which also considering the Congressional mandate to provide an adequate regulatory structure for introducing brokers [129] and has developed significant alternatives which will minimize any significant economic impact upon these entities.

With respect to the proposed regulations, concerns were expressed regarding two areas of the Commission's requirements which might affect small entities—the appropriate level of minimum adjusted net capital and the reporting of an introducing broker's compliance with those financial requirements.[130] In response to these concerns, the Commission has provided a variety of significant alternative methods by which compliance with these requirements may be achieved. The Commission is convinced that these alternative measures will provide affected persons with the maximum possible flexibility as to the manner and form of operation while remaining consistent with the Commission's objectives of customer protection and financial stability for introducing brokers.

1. *Alternatives to minimum capital requirement.* With respect to the minimum capital requirements for introducing brokers, the Commission noted in its proposal that Congress clearly intended that minimum capital requirements, similar to those which are in effect for FCMs, be prescribed for introducing brokers. The Commission further observed that such requirements were meant to apply, regardless of the size of the firm, because of the nature of the relationship between an introducing broker and its customers and the consequent need for an introducing broker to have sufficient capital to meet its obligations and to maintain its financial stability.[131] As such, the provisions of the Futures Trading Act of 1982 and the Commission's final regulations do not contain variable minimum financial requirements which are related to the size or the number of customers of a particular firm, but rather are uniform in scope. Indeed, the Commission's rules do not provide for differential capital and other requirements precisely because those rules merely set forth *minimum* standards with which all introducing brokers must comply.[132]

The Commission has nevertheless carefully considered several alternatives to a minimum capital requirement for introducing brokers in a further effort to minimize any significant economic impact on small entities without vitiating the purposes of these financial requirements. In this regard, the Commission notes that in proposing its rules it recognized that the amount of required minimum net capital must not only "effectuate the Congressional purpose that introducing brokers have a sufficient reserve of capital to remain economically viable" but also "not be so onerous as to constitute a barrier to the entry into, or continuation in, the commodities industry." 48 FR 14933, 14956 (April 6, 1983). Consistent with the requirements of the RFA, the Commission has taken into consideration, in both proposing and adopting these rules, the impact of minimum capital requirement on persons which have previously been engaged in business as agents of FCMs and, as noted above, has also considered various alternatives designed to minimize any significant economic impact of these rules.

For example, and as discussed in greater detail above, the Commission has reduced the capital requirement for introducing brokers to $20,000 from the proposed $25,000 level. In this connection, the Commission understands that some FCMs required their former "agents" to deposit with the FCM sums substantially in excess of $25,000 in order to indemnify the FCM for claims filed against it by customers of the agent and for deficits in those customers' accounts. The Commission has further determined to permit an introducing broker or applicant therefor to include as a current asset for purposes of computing net capital 50% of the value of such a guarantee or security deposit. This would not have been the case under the original proposal because such restricted capital would not ordinarily be considered "good" capital under the Commission's net capital rules. In addition, introducing brokers will be permitted, as the Commission proposed, to meet the capital requirement by obtaining funds pursuant to a satisfactory subordination agreement. The Commission also has determined that introducing brokers generally need not be subject to the Commission's financial "early warning" system, effectively reducing the proposed minimum capital requirement from $37,500 to $25,000 and eliminating the need to file monthly reports if the introducing broker's capital fell below $37,500.

Moreover, the Commission has adopted an alternative capital requirement which provides that an introducing broker need not maintain its own capital if it is operating pursuant to a guarantee agreement with an FCM under which a carrying FCB will be permitted to assume regulatory and financial responsibility for the activities of the introducing broker. Although the introducing broker would still have to register as such and would remain subject to fitness standards, recordkeeping requirements and those other regulations which apply uniformly to all introducing brokers, that introducing broker would not be subject to annual certified audits of its financial statements nor would such an introducing broker be required to file interim financial reports. Under this approach, an introducing broker who either cannot meet, or does not choose to meet, the capital requirements that would otherwise be applicable will nonetheless be able to continue to operate as an independent business. Taken together, these alternatives and others discussed throughout this release will greatly minimize any significant economic impact on those introducing brokers which may be small entities.

The Commission has also considered, and rejected, other standards and regulatory initiatives which, in the absence of impediments to their successful implementation, could serve as additional alternative methods of compliance for affected persons. For example, the Commission considered the probable availability and expense of

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[129] *See, e.g.*, S. Rep. No. 384, 97th Cong., 2d Sess. 111 (1982); H.R. Rep. No. 565, 97th Cong., 2d Sess., Part 1 at 49 (1982).

[130] Another concern expressed by potential introducing brokers was the adequacy of notice of the Commission's proposal. First, the Commission's porposal was published in the **Federal Register** to provide notice to all potentially affected parties. Second, immediately after publication of that **Federal Register** notice, the Commission sent a letter to all registered futures commission merchants to advise those FCMs and their agents of the Commission's proposal and of the Commission's "no-action" position. In this connection, the Commission has deferred for a 90-day period the effectiveness of the minimum capital requirements with respect to those firms which met the conditions of the no-action position.

[131] *See, e.g.*, H.R. Rep. No. 565, 97th Cong., 2d Sess. 49 (1982). *See generally* 48 FR 14933, 14955–56 (April 6, 1983).

[132] The Commission has, however, provided an alternative to compliance with the minimum capital requirement for an introducing broker which enters into a guarantee agreement.

third-party bonds as an alternative means of satisfying the minimum financial requirements. The Commission determined, however, not to require fidelity bonding because such bonds are not generally available to firms engaged exclusively in the solicitation and acceptance of orders for commodity futures or option trading.[133]

The Commission has also previously considered the alternative of an insurance program for commodity customers similar to that provided by the Securities Investor Protection Corporation for securities customers in lieu of a minumum capital requirements. Because introducing brokers will not hold customer funds, the Commission does not believe that such a program would provide a satisfactory alternative. Such an insurance program, if feasible, generally would insure only against customer losses due to the insolvency of the insured firm. Therefore, the type of customer losses likely to be generated by introducing brokers, such as those resulting from fraudulent sales practices, would not be covered.

2. *Alternatives to reporting and other requirements.* One commentator, as noted above, stated that certain of the Commission's financial reporting requirements would be unduly burdensome to an introducing broker which is also a country elevator. The commentator noted that country elevators frequently provide the best means for farmers to hedge their grain sales, an important function of futures markets, and that such market participation should not be impeded. In this regard, the Commission has provided an additional filing option for such persons by permitting them to comply with the Commission's financial reporting requirements through the submission of reports which are already required to be prepared in connection with the Uniform Grain Storage Agreements administered by the Commodity Credit Corporation of the United States Department of Agriculture. The Commission has also modified its reporting requirements to permit introducing brokers that are also securities brokers or dealers to satisfy certain of these requirements by filing with the Commission a copy of certain reports which such firms are required to file with the Securiites and exchange Commission. Further, as previously noted, the Commission has determined that introducing brokers need not be subject to the Commission's financial "early warning" system, thus eliminating the need to file monthly reports if the introducing broker's capital fell below 150 percent of the minimum capital requirement.

The Commission has also taken other steps to minimize any disruption to existing business activities of persons registered or required to be registered with the Commission. Specifically, as indicated earlier, the Commission is adopting a temporary regulation (§ 3.12a(T)) which will allow an introducing broker to "transfer" the registration of its APs to or from an FCM without having to file application forms, fingerprint cards, or the registration fee for those APs; deferring for 90 days the effective date of the capital requirement for introducing brokers operating pursuant to the Commission's "no-action" position; providing those persons who formerly operated as agents several alternatives (*i.e.*, branch office or AP of an FCM, introducing broker with minimum capital requirement, and introducing broker with alternative capital requirement); and allowing those persons who did not qualify for the Commission's introducing broker "no-action" position and who now must register as introducing brokers because of the form in which they are compensated up to 90 days in which to apply for registration. Thus, and as the foregoing discussion makes clear, these regulations provide affected individuals and forms with adequate time and a larger measure of flexibility in selecting among the various methods by which they may choose to structure their business operations so as to comply with the requirements contained herein.

B. Effective Date

Section 4(c) of the Administrative Procedure Act (5 U.S.C. 553(d)) specifies generally that rules promulgated by an agency may not be made effective less than 30 days after publication except "for good cause." The Commission finds that good cause exists to make the rules contained herein effective upon the date of publication because the adoption of these rules is necessary to allow persons who were not formerly registered with the Commission and who have not qualified (or who have ceased to qualify) for an appropriate "no-action" position to now apply for registration.[134] Moreover, persons subject to the existing "no-action" positions of the Commission will not be prejudiced by immediate effectiveness of these rules, since the Commission's "no-action" positions will continue for such persons for a period of time sufficient to enable compliance with these rules.

As noted above, Congress considered implementation of these rules to be a significant addition to the existing regulatory structure under the Act. In this respect, the Commission will continue to monitor the effect of these rules and will consider such revisions to the system being adopted hereing as may be appropriate.

C. Paperwork Reduction Act

The Commission has submitted pertinent portions of these rules to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

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.

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[133] In addition, the Commission believes that practical considerations resulting from the nature of commodity futures trading militate against the probable effectivess of a third-party bonding alternative. First, fidelity bonds currently available only insure the firms; they do not cover third-party claims. Second, there are no bonds available to cover misrepresentation or fraud; existing bonds in the securities industry cover only embezzlement or theft of funds. Third, the fact that potential losses may be so great in relation to total premiums collected for bonding undoubtedly would complicate premium setting and would tend to ensure high premiums Also, because of the relatively small number of firms in the business, an industry-wide bonding requirement might not compensate for the high degree of risk in individual cases and, even if bonds were available, premiums would likely be prohibitive.

[134] The Commission's "no-action" position for introducing brokers was limited to those individuals and firms which had been designated as an "agent" of an FCM on April 7, 1983. 48 FR 15890, 15891, 15892 (April 13, 1983). The Commission's "no-action" position further specified that an introducing broker operating under that "no-action" position will not be able to hire new APs "prior to the time it is formally registered as an introducing broker" (*id.* at 15893); an introducing broker cannot, however, be registered as such until the rules contained herein are made effective. The Commission's "no-action" position for the APs of CTAs and CPOs similarly provided that, with certain limited exceptions, a CTA or CPO could not hire new associated persons "until the Commission makes effective appropriate regulations." 48 FR 16879, 16880 (April 20, 1983).

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 17

Futures commission merchants, Introducing brokers, Reporting requirements.

17 CFR Part 18

Futures commission merchants, Introducing brokers, reporting requirements, Reporting traders.

17 CFR Part 21

Special calls for information, Introducing brokers.

17 CFR Part 33

Commodity exchange designation procedures, Commodity options, introducing brokers, Promotional material, Risk disclosure statement, Self-regulatory organization.

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, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 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 be authority contained in 5 U.S.C. 552 and 552b, the Commission hereby amends 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 amended by revising paragraphs (aa), (bb), and (ff) and by adding paragraphs (mm) and (nn) 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' or option 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, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, (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.

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(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: (1) Any person who, for compensation or profit, whether direct

or indirect, is engaged in soliciting or in accepting orders (other than in a clerical capacity) 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; and (2) includes any person required to register as an introducing broker by virtue of Part 33 of this chapter: *Provided,* That the term "introducing broker" shall not include: (i) any futures commission merchant, floor broker, or associated person, acting in its capacity as such, regardless of whether that futures commission merchant, floor broker, or associated person is registered or exempt from registration in such capacity; (ii) any commodity trading advisor, which, acting in its capacity as a commodity trading advisor, is not compensated on a per-trade basis or which solely manages discretionary accounts pursuant to a power of attorney, regardless of whether that commodity trading advisor is registered or exempt from registration in such capacity; and (iii) any commodity pool operator which, acting in its capacity as a commodity pool operator, solely operates commodity pools, regardless of whether that commodity pool operator is registered or exempt from registration in such capacity.

(nn) *Guarantee agreement.* This term means an agreement of guaranty in the form set forth in Part B of form 1–FR, executed by a registered futures commission merchant and by an introducing broker or applicant for registration as an introducing broker on behalf of an introducing broker or applicant for registration as an introducing broker in satisfaction of the alternative adjusted net capital requirement set forth in § 1.17(a)(2)(ii).

2. Section 1.10 is amended by revising the section heading and paragraphs (a)(2), (a)(3), (b)(1), (b)(3), (b)(4), (c), (d)(1), (d)(2), (e), (g), and (h), and by adding paragraphs (i) and (j), to read as follows:

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

(a) * * *

(2)(i) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as a futures commission merchant and who is not so registered at the time of such filing, must, concurrently with the filing of such application file either: (A) 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 (B) 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 assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) Except as provided in paragraphs (a)(3), (h) and (i) of this section, each person who files an application for registration 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: (A) 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 (B) 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, or (C) a guarantee agreement. Each person filing in accordance with paragraphs (a)(2)(ii)(A) or (B) of this section must include with such financial report a statement describing the source of his current assets 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)(i) 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. Each such person who files an application for registration as a futures commission merchant 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.

(ii) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another introducing broker. (A) Each such person who succeeds to and continues the business of an introducing broker which was not operating pursuant to a guarantee agreement, or which was operating pursuant to a guarantee agreement and was also a securities broker or dealer, at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement with his application for registration or a form 1–FR as of the first monthend following the date on which his registration is approved. Such form 1–FR must be filed not more than 45 days after the date for which the report is made. (B) Each such person who succeeds to and continues the business of an introducing broker which was operating pursuant to a guarantee agreement and which was not also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement or a form 1–FR with his application for registration. If such person files a form 1–FR with his application for registration, such person must also file a form 1–FR, certified by an independent public accountant, as of the date registration is granted. The form 1–FR certified by an independent public accountant must be filed with the National Futures Association not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1) Except as provided in paragraphs (b)(3), (h) and (i) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as a futures commission 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.

(4) Upon receiving written notice from any representative of the Commission or any self-regulatory organization of which it is a member, an applicant or registrant must, monthly or at such times as specified, furnish the Commission and the self-regulatory organization, if any, requesting such information with a form 1–FR and/or such other financial information as requested by the representative of the Commission or the self-regulatory organization. In addition, upon receiving written notice from any representative of the National Futures Association, an applicant for registration as an introducing broker, except for such an applicant which has filed concurrently with its application for registration a guarantee agreement and which is not also a securities broker or dealer, must, monthly or at such times as specified, furnish the National Futures Association and the Commission with a form 1–FR and/or such other financial information as requested by the representative of the National Futures Association. Each such form 1–FR or such other information must be furnished within the time period specified in the written notice.

(c) *Where to file reports.* The reports provided for in this § 1.10 will be considered filed when received by the regional office of the Commission nearest the principal place of business of the applicant or registrant and by the designated self-regulatory organization, if any, except that reports required to be filed by this § 1.10 by an applicant for registration as an introducing broker will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant: *Provided, however,* That information required of an applicant or registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission.

(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 commission 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, or, in the case of an applicant for registration as an introducing broker, the National Futures Association, 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, or does not so notify the National Futures Association, 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, or, in the case of an applicant for registration as an introducting broker, the National Futures Association, 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.* (1) 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.

(2) 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.

(3) All of the copies of the financial report filed pursuant to paragraph (i) of this section will be public: *Provided, however,* That if the balance sheet and the statement of the computation of the minimum capital requirements pursuant to § 1.17 are bound separately from the other financial statements, footnote disclosures and schedules contained in such financial report, 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.

(4) 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.

(5) The independent accountant's opinion, the grain commission firm's opinion, and a guarantee agreement 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), (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.

(i) *Filing option available to an introducing broker or applicant for registration as an introducing broker which is also a country elevator.* Any introducing broker or applicant for registration as an introducing broker which is also a country elevator but which is not also a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b) and (c) of this section) a copy of a financial report prepared by a grain commission firm which has been authorized by the Deputy Vice President of the Commodity Credit Corporation of the United States Department of Agriculture to provide a compilation report of financial statements of warehousemen for purposes of Uniform Grain Storage Agreements, and which complies with the standards for independence set forth in § 1.16(b)(2) with respect to the registrant or applicant: *Provided, however,* That all information which is required to be furnished on and submitted with form 1–FR is provided with such financial report, including a statement of the computation of the minimum capital requirements pursuant to § 1.17: *And, provided further,* That the balance sheet is presented in a format as consistent as possible with the form 1–FR and a reconciliation is provided reconciling such balance sheet to the statement of the computation of the minimum capital requirements pursuant to § 1.17. Attached to each financial report filed pursuant to this paragraph (i) must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained therein 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.

(j) *Requirements for guarantee agreement.* (1) A guarantee agreement filed pursuant to this section must be signed in a manner sufficient to be a binding guarantee under local law by an appropriate person on behalf of the futures commission merchant and the introducing broker, and each signature must be accompanied by evidence that the signatory is authorized to enter the agreement on behalf of the futures commission merchant or introducing broker and is such an appropriate person. For purposes of this paragraph (j), an appropriate person shall be the proprietor, if the firm is a sole proprietorship; a general partner, if the firm is a partnership; and either the chief executive officer or the chief financial officer, if the firm is a corporation.

(2) No futures commission merchant may enter into a guarantee agreement if:

(i) It knows or should have known that its adjusted net capital is less than the amount set forth in § 1.12(b); or

(ii) On or after the effective date of this paragraph (j), there is filed against the futures commission merchant an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Sections 6(b), 6(c), 6c, 6d, 8a, or 9 of the Act.

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.15(a) of this chapter shall become effective upon the granting of registration to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(4)(i) If the introducing broker fails to renew its registration, or if such registration is suspended, revoked, or withdrawn in accordance with the provisions of § 3.33 of this chapter, the guarantee agreement shall expire as of the date of such failure, suspension, revocation or withdrawal.

(ii) If the futures commission merchant fails to renew its registration, or if such registration is suspended or revoked, the guarantee agreement shall expire 30 days after such failure, suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

(5) A guarantee agreement may be terminated at any time during the term thereof:

(i) By mutual written consent of the parties, signed by an appropriate person on behalf of each party, with prompt written notice thereof, signed by an appropriate person on behalf of each

party, to the Commission and to the designated self-regulatory organizations of the futures commission merchant and the introducing broker;

(ii) For good cause shown, by either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant and the introducing broker; or

(iii) By either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, at least 30 days prior to the proposed termination date, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant and the introducing broker.

(6) The termination of a guarantee agreement by a futures commission merchant or an introducing broker, or the expiration of such an agreement, shall not relieve either party from any liability or obligation arising from acts or omissions which occurred during the term of the agreement.

(7) An introducing broker may not simultaneously be a party to more than one guarantee agreement: *Provided, however,* That the provisions of this paragraph (j)(7) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant if the introducing broker or the futures commission merchant which is a party to the existing agreement has provided notice of termination of the existing agreement in accordance with the provisions of paragraph (j)(5) of this section, and the new guarantee agreement does not become effective until the day following the date of termination of the existing agreement: *And, provided further,* That the provisions of this paragraph (j)(7) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant if the futures commission merchant which is a party to the existing agreement ceases to remain registered and the existing agreement would therefore expire in accordance with the provisions of paragraph (j)(4)(ii) of this section.

(8)(i) An introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5) of this section, or which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission and the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or a form 1-FR. If the introducing broker files such form 1-FR, the introducing broker must also file a form 1-FR, certified by an independent public accountant, as of the day following the date of termination or expiration of the guarantee agreement. The form 1-FR certified by an independent public accountant must be filed with the designated self-regulatory organization not more than 45 days after the date for which the report is made.

(ii) Notwithstanding the provisions of paragraph (j)(8)(i) or of § 1.17(a), an introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(ii) or § 1.17(a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new guarantee agreement or a form 1-FR. If the introducing broker files a form 1-FR, the introducing broker must also file a second form 1-FR, certified by an independent public accountant, as of the day on which the first form 1-FR is filed. The form 1-FR certified by an independent public accountant must be filed with the designated self-regulatory organization not more than 45 days after the date for which the report is made.

3. Section 1.12 is amended by revising the section heading and paragraphs (a), the introductory paragraph of (b), (b)(1) and (g) 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 who files an application for registration as a futures commission merchant, and each person registered as an introducing broker or who files an application for registration as an introducing broker (except for an introducing broker or applicant for registration as an introducing broker operating pursuant to, or who has filed concurrently with its application for registration, a guarantee agreement and who is not also a securities broker or dealer), 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 is that such applicant's or registrant's adjusted net capital is less than required by § 1.17 or by such other capital rule, identifying the applicable capital rule. This notice must be given within 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) Each person registered as a futures commission merchant, or who files an application 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:

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

* * * * *

(g) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) must be filed with the regional office of the

Commission for the region in which the applicant or registrant has its principal place of business, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant or registrant is a securities broker or dealer. In addition, every notice and written report which an introducing broker or applicant for registration as an introducing broker is required to give or file by paragraphs (a), (c) and (d) of this section also must be filed with the National Futures Association, with the designated self-regulatory organization, if any, and with every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. Further, every notice required to be given by this section must also be filed with the principal office of the Commission in Washington, D.C. Each statement of financial condition, each statement of the computation of the minimum capital requirements pursuant to § 1.17, and each schedule of segregation requirements and funds on deposit in segregation required by this section must be filed in accordance with the provisions of § 1.10(d) of these regulations, unless otherwise indicated.

* * * * *

4. Section 1.16 is amended by revising paragraphs (c)(5), (d), (e)(2) and (f)(1) and by adding a new paragraph (h) to read as follows:

§ 1.16 Qualifications and reports of accountants.

* * * * *

(c) * * *

(5) *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 supplemental 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 objectives.* (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.

(e) * * *

(2) If during the course of an audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, in the internal accounting control, in the procedures for safeguarding customer or firm assets, or as otherwise defined in paragraph (d) of this section, he must call such inadequacies to the attention of the applicant or registrant, who has the responsibility to inform the Commission and the designated self-regulatory organization, if any, in accordance with paragraphs (d) and (g) of § 1.12: *Provided, however,* That if the applicant or registrant is an introducing broker or applicant for registration as an introducing broker, such firm also has the responsibility to inform the National Futures Association, the designated self-regulatory organization, if any, and every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. The applicant or registrant must also furnish the accountant with a copy of said notice to the Commission within 3 business days. If the accountant fails to receive such notice from the applicant or registrant within 3 business days, or if he disagrees with the statements contained in the notice of the applicant or registrant, the accountant must inform the Commission and the designated self-regulatory organization, if any, by reporting the material inadequacy and, in the case of an applicant or registrant which is an introducing broker or applicant for registration as an introducing broker, the accountant must also inform the National Futures Association, the designated self-regulatory organization, if any, and every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker, within 3 business days thereafter. Such report from the accountant must, if the applicant or registrant failed to file a notice, describe the material inadequacies found to exist. If the applicant or registrant filed a notice, the accountant must file a report detailing the aspects, if any, of the

applicant's or registrant's notice with which the accountant does not agree.

(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 designated 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 the applicant's or registrant's 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 computation 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 designated 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 futures commission merchant) the segregation requirements of Section 4d(2) of the Act and these regulations, or has any significant financial or recordkeeping problems?

* * * * *

(h) *Exemption for introducing broker or applicant therefor.* The provisions of this section do not apply to an introducing broker which is operating pursuant to a guarantee agreement, nor do such provisions apply to an applicant for registration as an introducing broker who files concurrently with such application a guarantee agreement, provided such introducing broker or applicant therefor is not also a securities broker or dealer.

5. Section 1.17 is amended by revising the section heading and paragraphs (a) and (c)(2)(viii), redesignating paragraph (c)(2)(ix) as paragraph (c)(2)(x) and adding a new paragraph (c)(2)(ix), and revising paragraphs (c)(4)(ii), (c)(4)(iii), (c)(5)(iii), (c)(5)(v), (c)(5)(viii), (c)(5)(ix), (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)(i) 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) $20,000 ($40,000 for each person registerd 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)).

(2)(i) 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

(ii) The minimum requirements of paragraph (a)(1)(ii) of this section shall not be applicable to an introducing broker which elects to meet the alternative adjusted net capital requirement for introducing brokers by operating pursuant to a guarantee agreement which meets the requirements set forth in § 1.10(j). Such an introducing broker shall be deemed to meet the adjusted net capital requirement under this section so long as such agreement is binding and in full force and effect, and, if the introducing broker is also a securities broker or dealer, it maintains the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(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 in its discretion 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 in its discretion 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 futures 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) * * *

(2) * * *

(viii) Include guaranteee deposits with clearing organizations and stock in clearing organizations to the extent of its margin value;

(ix) In the case of an introducing broker or an applicant for registration as an introducing broker, include 50 percent of the value of a guarantee or security deposit with a futures commission merchant which carries or intends to carry accounts for the customers of the introducing broker; and

(x) Exclude exchange memberships.

* * * * *

(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));

* * * * *

(viii) In the case of a futures commission merchant, for undermargined customer commodity futures accounts and commodity option customer accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade of if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding three business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding three business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* to the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(viii). In the event that an owner of a customer account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this subparagraph shall be the lesser of (A) the value attributable to the asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of the asset after application of the percentage deductions specified in this paragraph (c)(5);

(ix) In the case of a futures commission merchant, for undermargined commodity futures and commodity option noncustomer and omnibus accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding two business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* to the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(ix). In the event that an owner of a noncustomer or omnibus account has deposited an asset other than cash to margin, guarantee or secure his account the value attributable to such asset for purposes of this subparagraph shall be the lesser of (A) the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of such asset after application of the percentage deductions specified in this paragraph (c)(5);

* * * * *

(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 a "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, of 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 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)(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 dollars 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 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 of 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, if such person is an introducing broker or applicant for registration as an introducing broker and is also a country elevator and he files a financial report in accordance with § 1.10(i), 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 (b) by completing the Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA. An introducing broker or applicant for registration as an introducing broker which is also a country elevator may meet the computation requirements of this paragraph (b) by means of a monthly financial report completed in accordance with § 1.10(i). 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, commending the first monthend after the date the application for registration is filed.

(c) The provisions of this section do not apply to an introducing broker which is operating pursuant to a guarantee agreement, nor do such provisions apply to an applicant for registration as an introducing broker who files concurrently with such application a guarantee agreement, provided such introducing broker or applicant therefor is not also a securities broker or dealer.

7. Section 1.19 is revised to read as follows:

§ 1.19 Prohibited trading in certain options.

No futures commission or 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 1.33 is amended by adding paragraph (f) to read as follows:

§ 1.33 Monthly and confirmation statements.

* * * * *

(f) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the futures commission merchant is providing the statement was introduced by an introducing broker and the names of the futures commission merchant and introducing broker.

9. Section 1.35 is amended by revising paragraphs (a), (a–1)(1), the introductory text of (b) and (b)(3) to read as follows:

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

(a) *Futures commission merchants, introducing broker, 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, 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:

* * * * *

(3) A record or journal which will separetely show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery, or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees and the person for whom the transaction was made; and

(iii) In the case of an introducing broker, the record or journal required by this paragraph (b)(3) shall also include the futures commission merchant carrying the account for which each commodity futures and commodity option transaction was executed on that day.

Provided, however, That where reproductions on microfilm are substituted for hard copy in accordance with the provisions of § 1.31(b), the requirements of paragraphs (b)(1) and (b)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity or commodity option books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and (b)(2) of this section, on request by any representative of the Commission or the U.S. Department of Justice.

* * * * *

10. Section 1.37 is 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, introducing broker, 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 or introduced for the option customer.

* * * * *

11. Section 1.46 is amended by revising paragraph (a)(4) and the concluding paragraph of (a) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) * * *

(4) Sells a put or call option for the account of any option customerr when the account of such option customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold

* * * * *

shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such customer a statement showing the financial result of the

transactions involved and, if applicable, that the account was introduced to the futures commission merchant by an introducing broker and the names of the futures commission merchant and introducing broker.

* * * * *

12. Section 1.52 is 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 contract market which elects to have a category of membership for introducing brokers 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, except that such a requirement shall not apply to an introducing broker which is operating pursuant to a guarantee agreement and which is not also a securities broker or dealer: *And, 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) Fosters cooperation and coordination among the contract markets; and

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

* * * * *

(j) Whenever a registered futures commission merchant 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.

13. Section 1.55 is amended by revising paragraphs (a) and (c) to read as follows:

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

(a) No futures commission merchant or, in the case of an introduced account, no 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.

14. Section 1.56 is amended by revising paragraphs (b), (c) and the introductory text 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 the acts or practices described in paragraph (b) of this section.

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

* * * * *

15. Section 1.57 is added to 17 CFR Part 1 to read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) Each introducing broker must—

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

(2) Transmit promptly for execution all customer and option customer orders to: (i) A carrying futures commission merchant; or (ii) a floor broker, if the introducing broker identifies its carrying futures commission merchant and that carrying futures commission merchant is also the clearing member with respect to the customer's or option customer's order.

(b) An introducing broker may not carry proprietary accounts, nor may an introducing broker carry accounts in foreign futures.

(c) An introducing broker may not accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts of customers or option customers, or any money, securities or property accruing as a result of such trades or contracts: *Provided, however,* That an introducing broker may deposit a check in a qualifying account or forward a check drawn by a customer or option customer if:

(1) The futures commission merchant carrying the customer's or option customer's account authorizes the introducing broker, in writing, to receive a check in the name of the futures commission merchant, and the introducing broker retains such written authorization in its files in accordance with § 1.31;

(2) The check is payable to the futures commission merchant carrying the customer's or option customer's account;

(3) The check is deposited by the introducing broker, on the same day upon which it is received, in a bank or trust company located in the United States in a qualifying account, or the check is mailed or otherwise transmitted by the introducing broker to the futures commission merchant on the same day upon which it is received;

(4) For purposes of this paragraph (c), a qualifying account shall be deemed to be an account:

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to commodity or option customers of the futures commission merchant carrying the customer's or option customer's account;

(ii) For which the bank or trust company restricts withdrawals to withdrawals by the carrying futures commission merchant;

(iii) For which the bank or trust company prohibits the introducing broker or anyone acting upon its behalf from withdrawing funds; and

(iv) For which the bank or trust company provides the futures commission merchant carrying the customer's or option customer's account with a written acknowledgment, which the futures commission merchant must retain in its files in accordance with § 1.31, that it was informed that the funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and these regulations.

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a.

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

§ 3.1 Definitions.

* * * * *

(b) *Current.* As used in §§ 3.10–3.16, 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 or introducing broker, or the commodity trading advisor or commodity pool operator, which makes the certification required by §§ 3.12 or 3.16, respectively, for the registration of an associated person of such sponsor.

18. Section 3.4 is redesignated as § 3.2 and, as redesignated, is amended to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

(a) With respect to the registration of introducing brokers and the associated persons of introducing brokers, the registration functions of the Commission set forth in this section and in §§ 3.12, 3.15, 3.21, 3.31, and 3.32 shall be performed by the National Futures Association.

(b) Notwithstanding any other provision of this Part, a registrant, applicant for registration, or principal may, to the extent these regulations would otherwise require the filing of any Form 3–R, 7–R, 8–R, 8–S, or 8–T, or any Schedule or supplement thereto, fingerprint card, or any other document required by these regulations to be filed with both the Commission and with the National Futures Association, file the original Form, Schedule, supplement, fingerprint card, or other document with either the Commission or the National Futures Association, respectively, if (1) a legible, accurate, and complete photocopy of that Form, Schedule, supplement, fingerprint card, or other document is filed simultaneously with the National Futures Association or the Commission, respectively, and (2) each photocopy contains an original signature and date in each place where such signature and date is required on the original Form, Schedule, supplement, fingerprint card, or other document.

(c) Upon receipt of an application for registration or renewal thereof, the Commission or the National Futures Association 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 or the National Futures Association will notify the sponsor.

(d) The registration of each futures commission merchant and floor broker shall expire on the thirty-first day of March following the date on which registration was granted.

19. Section 3.2 is redesignated as Section 3.4 and, as redesignated, is amended to read as follows:

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

Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, floor broker, associated person, commodity trading

advisor, commodity pool operator, and introducing broker must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided further,* That except as may be provided 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.

20. Section 3.10 is 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 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, 3.15, or 3.16.

* * * * *

(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 paragraph (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, 3.15, or 3.16: *Provided,* That the futures commission merchant must notify the Commission within twenty days of the name of such added principal on Form 3–R.

* * * * *

21. Section 3.11 is 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, 3.15, or 3.16.

* * * * *

22. Section 3.12 is amended by revising the section heading and by revising paragraphs (a), (b), the introductory paragraph of (c), (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 a new paragraph (h) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants and introducing brokers.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant or with an introducing broker as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant or introducing broker in accordance with the procedures in paragraph (c) or (d) of this section, except that this section does not preclude any associated person of a futures commission merchant who was so registered on July 1, 1982 from continuing to act as an associated person of a futures commission merchant 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 paragraphs (d) and (f) of this section, application for registration as an associated person of a futures commission merchant or introducing broker must be on Form 8–R, completed and filed 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 sponsoring futures commission merchant as an associated person;

(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 that 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 for that purpose by the Commission or by the National Futures Association, 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 associated person subsequent to July 1, 1982, is associated with the sponsoring futures commission merchant as an associated person.

(4) When the Commission or the National Futures Association 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) Except as provided in paragraph (f) of this section, 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, and who becomes associated with a sponsoring futures commission merchant or introducing broker which makes the certification provided by paragraph (d)(1)(i) of this section (or, in the case of an associated person of a futures commission merchant, is associated with a futures commission merchant which makes the certification provided by paragraph (d)(1)(i) of this section on or prior to the first expiration of that person's registration as an associated person subsequent to July 1, 1982) will be registered as, and in the capacity of, an associated person of such sponsor upon the mailing by that sponsor to the Commission, or in the case of an associated person of an introducing broker, upon the mailing by that introducing broker to the National Futures Association, 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 or, if the sponsor is an introducing broker, with the National Futures Association, a Form 8–R in accordance with the instructions thereto. The Form 8–R must contain the certifications required by paragraphs (c)(1)(ii) through (c)(1)(iv) of this section and must be accompanied by the fingerprint card provided by the Commission or by the National Futures Association for 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 sponsoring futures commission merchant 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—

(1) More than one futures commission merchant or with more than one introducing broker;

(2) A futures commission merchant and an introducing broker;

(3) A futures commission merchant and a commodity trading advisor for which that futures commission merchant solicits or intends to solicit clients or prospective clients: *Provided,* That a person registered as an associated person of a futures commission merchant who solicits clients by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the futures commission merchant;

(4) A futures commission merchant and a commodity trading advisor for which that futures commission merchant carries or introduces, or intends to carry or introduce, clients' or prospective clients' discretionary accounts;

(5) A futures commission merchant and a commodity pool operator for which that futures commission merchant solicits or intends to solicit funds, securities, or property: *Provided,* That a person registered as an associated person of a futures commission merchant who solicits funds, securities, or property by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the futures commission merchant;

(6) A futures commission merchant and a commodity pool operator for which that futures commission merchant carries or introduces, or intends to carry or introduce, the account of a commodity pool operated by that commodity pool operator;

(7) An introducing broker and a commodity trading advisor for which that introducing broker solicits or intends to solicit clients or prospective clients: *Provided,* That a person registered as an associated person of an introducing broker who solicits clients by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker;

(8) An introducing broker and a commodity trading advisor for which that introducing broker introduces, or intends to introduce, clients' or prospective clients' discretionary accounts;

(9) An introducing broker and a commodity pool operator for which that introducing broker solicits or intends to solicit funds, securities, or property: *Provided,* That a person registered as an associated person of an introducing broker who solicits funds, securities, or property by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker; or

(10) An introducing broker and a commodity pool operator for which that introducing broker introduces, or intends to introduce, the account of a commodity pool operated by that commodity pool operator.

(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 Commission, 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 an 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 as the Commission may find appropriate.

* * * * *

(h) *Exemption from registration.* A person is not required to register as an associated person of a futures commission merchant or as an associated person of an introducing broker if that person is:

(1) Registered with the Commission as a futures commission merchant, floor broker, or as an introducing broker; or

(2) Is engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative, or limited principal, and that person does not engage in any other activity subject to regulation by the Commission.

23. Section 3.12a–(T) is added to 17 CFR Part 3 to 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 registered associated person of a registered futures commission merchant will be registered as an associated person of a registered introducing broker, and any registered associated person of an introducing broker will be registered as an associated person of a registered futures commission merchant, if the futures commission merchant and the introducing broker submit to the Commission, not later than January 31, 1984, a statement, signed and dated by the futures commission merchant and by the introducing broker, 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 introducing broker or futures commission merchant with which the associated person will be associated as an associated person 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 from the futures commission merchant to the introducing broker or from the introducing broker to the futures commission merchant, be registered as associated persons of the introducing broker or futures commission merchant, respectively, and will remain registered in such capacity in accordance with the provisions of § 3.12(b) as if the introducing broker or futures commission merchant 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 as associated persons of the introducing broker or futures commission merchant in accordance with the procedures specified in § 3.12.

(c) An introducing broker may not use the provisions of this § 3.12a–(T) more than once nor may the registration of an associated person be transferred more than once pursuant to the provisions of this section.

24. Section 3.13 is 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, 3.15, or 3.16.

* * * * *

(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, 3.15, or 3.16: *Provided,* That the commodity trading advisor must notify the Commission within twenty days of the name of such added principal on Form 3–R.

25. Section 3.14 is 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 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, 3.15, or 3.16.

* * * * *

(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 paragraph (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, 3.15, or 3.16: *Provided,* That the commodity pool operator must notify the Commission within twenty days of the name of such added principal on Form 3–R.

26. Section 3.15 is added to 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 National Futures Association 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 National Future Association 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, 3.15, or 3.16.

(b) *Renewal of registration.* Application for renewal of registration as an introducing broker must be on Form 7–R, completed and filed with the National Futures Association 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 paragraph (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the National Future Assoication. 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 National Future Association 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, 3.15, or 3.16: *Provided,* That the introducing broker must notify the National Future Association within twenty days of the name of such added principal on Form 3–R.

27. Section 3.16 is added to 17 CFR Part 3 to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

(a) *Registration required.* Except as otherwise provided in § 3.12(f) or in paragraph (e) of this section, it shall be unlawful for any person to be associated with a commodity trading advisor or with a commodity pool operator as an associated person unless that person:

(1) Is registered under the Act as an associated person of the sponsoring commodity trading advisor or commodity pool operator in accordance with the procedures in paragraph (c) or (d) of this section;

(2) Is registered (i) as a futures commission merchant, floor broker, or introducing broker, (ii) as a commodity trading advisor, if that person is associated with a commodity trading advisor, or (iii) as a commodity pool operator, if that person is associated with a commodity pool operator;

(3) Is exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14(a)(1) or § 4.14(a)(2) of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of this paragraph (a)(3) shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity trading advisor (i) which is not exempt from registration pursuant to the provisions of § 4.14(a)(1) or § 4.14(a)(2) of his chapter or (ii) which is registered as a commodity trading advisor notwithstanding the availability of that exemption;

(4) Is exempt from registration as a commodity pool operator pursuant to the provisions of § 4.13 of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of this paragraph (a)(4) shall not apply to the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity pool operator (i) which is not exempt from registration pursuant to the provisions of § 4.13 of this chapter or (ii) which is registered as a commodity pool operator notwithstanding the availability of that exemption;

(5) Is enaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or supervises any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative, or limited principal, and that person does not engage in any other activity subject to regulation by the Commission; or

(6) Where a commodity pool is operated or to be operated by two or more commodity pool operators, is registered as an associated person of one of the pool operators of the commodity pool in accordance with the provisions of paragraph (c), (d), or (e)(2) of this section: *Provided,* That each such commodity pool operator shall be jointly and severally liable for the conduct of that associated person in the solicitation of funds, securities, or property for participation in the commodity pool, or the supervision of any person or persons so engaged, regardless of whether that associated person is registered as an associated person of each such commodity pool operator.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), or (e)(2) 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, each of the associated person's sponsors.

(c) *Application for initial registration.* Except as otherwise provided in paragraphs (d) and (e) of this section, application for initial registration as an associated person of a commodity trading advisor or commodity pool operator must be on Form 8–R, completed and filed in accordance with the instructions thereto.

(1) No person will be registered as an associated person in accordance with this paragrpah (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;

(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 that Form 8–R, or in the records and documents obtained in support of the certifications required by this section.

(2) The certification required by paragraph (c)(1) of this section may be submitted with the Form 8–R or may be submitted separately at a later date.

(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 for that purpose by the Commission.

(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) Except as otherwise provided in paragraph (e) of this section, any person who is no longer registered as an associated person in any capacity and who becomes associated with a sponsoring commodity trading advisor or commodity pool operator which makes the certification provided by paragraph (d)(1)(i) of this section within sixty days after the termination of that person's registration as an associated person, will be registered as, and in the capacity of, an associated person of such sponsoring commodity trading advisor or commodity pool operator 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;

(iii) That such person is eligible to be registered in accordance with this paragraph (d);

(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 for that purpose.

(e) *Reporting of dual and multiple associations.* (1) No person may be simultaneously associated with—

(i) A commodity trading advisor and with a futures commission merchant or an introducing broker in violation of § 3.12(f);

(ii) A commodity pool operator and with a futures commission merchant or an introducing broker in violation of § 3.12(f); or

(iii) A sponsoring commodity trading advisor or commodity pool operator and any other sponsor other than in accordance with the provisions of paragraph (e)(2) of this section.

Provided, however, That the provisions of this paragraph (e)(1) shall not apply to any person who is exempt from registration as an associated person of a commodity trading advisor or as an associated person of a commodity pool operator pursuant to the provisions of paragraphs, (a)(2) through (a)(6) of this section if that person is not otherwise required to register as an associated person of a commodity trading advisor or as an associated person of a commodity pool operator.

(2)(i) A person who is already registered as an associated person in any capacity may become associated with a commodity trading advisor or with a commodity pool operator if that commodity trading advisor or commodity pool operator files with the Commission a Form 3–R in accordance with the instructions thereto. Such filing shall constitute a certification that the commodity trading advisor or commodity pool operator has verified that the associated person is currently registered as an associated person in any capacity and that the associated person is not subject to a statutory disqualification as set forth in Section 8a(2) of the Act, and an acknowledgment that in addition to its responsibility to supervise that associated person, the commodity trading advisor or commodity pool operator is jointly and severally responsible for the conduct of the associated person with respect to the solicitation of any client's or prospective client's discretionary account or the solicitation of funds, securities, or property for a participation in a commodity pool, with respect to any customers or option customers common to it and any other commodity trading advisors or commodity pool operators with which the associated person is associated. Upon receipt by the Commission of such a Form 3–R, the associated person named therein shall be registered as an associated person of the sponsoring commodity trading advisor or commodity pool operator.

(ii) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of this

paragraph (e)(2) shall be required, upon receipt of notice from the Commission or its designee, to file with the Commission or its designee the registrant's fingerprints on a fingerprint card provided by the Commission or its designee for that purpose as well as such other information as the Commission or its designee may require. In addition to or in lieu of the requirements of § 3.22, the Commission or its designee may require such a filing every two years, or at such greater period of time as the Commission may deem appropriate, after the associated person has become associated with a commodity trading advisor or with a commodity pool operator in accordance with the requirements of this paragraph (e)(2).

(f) *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.

(g) *Petitions for exemption.* (1) Any person adversely affected by the operation of this § 3.16 may file a petition with the Secretary of the Commission, 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 an 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 as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's designee the authority to grant or deny petitions filed pursuant to this paragraph (g).

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (g)(2)(i) of this section.

28. Section 3.21 is revised 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, 3.15, or 3.16 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 if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the Commission or the National Futures Association 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 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.

29. Section 3.30 is revised to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission.

The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal 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 or with the National Futures Association 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 or with the National Futures Association.

30. Section 3.31 is amended by revising paragraphs (a), (b), (c)(1), and (c)(2) to read as follows:

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

(a) 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 therto 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 twenty days after the occurrence of either of the following, file a notice thereof with the Commission or, in the case of an introducing broker, with the National Futures Association, 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)(i) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, or commodity pool operator must, within twenty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the Commission.

(ii) Each person registered as, or applying for registration as, an introducing broker must, within twenty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

31. Section 3.32 is amended by revising paragraph (a) to read as follows:

§ 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;

* * * * *

32. Section 3.33 is amended by revising paragraphs (b)(7)(iv) and (b)(7)(v), by adding paragraph (b)(7)(vi), and by revising paragraph (c) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(b) * * *

(7) * * *

(iv) In the case of a commodity pool operator, that all interests in, and assets of, any commodity pool have been redeemed, distributed, or transferred, on behalf of the participants therein, and that there are no obligations to such participants outstanding;

(v) The nature and extent of any pending customer, option customer or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer or commodity pool participant claims against the registrant; and

(vi) In the case of a futures commission merchant which is a party to a guarantee agreement, that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) of this chapter not more than thirty days after the filing of the request for withdrawal from registration.

(c) Where a futures commission merchant or an introducing broker which is not operating pursuant to a guarantee agreement 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: *Provided, however,* That if such registrant is also registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (in accordance with § 1.10(h) of this chapter), in lieu of form 1–FR: *And, provided further,* That if such introducing broker is also a country elevator, it may file a copy of a financial report prepared by a grain commission firm (in accordance with § 1.10(i) of this chapter), in lieu of form 1–FR. Any financial report submitted pursuant to this paragraph (c) must contain 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

33. Section 4.14 is 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 is 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 the person's trading advice is solely in connection with its business as an introducing broker.

* * * * *

34. Section 4.21 is amended by revising paragraphs (a)(1)(vii), (a)(3)(i)(E), (a)(3)(i)(F), by adding paragraphs (a)(3)(i)(G) and (a)(3)(i)(H), by revising the concluding paragraph of paragraph (a)(3)(i), paragraphs (a)(13)(i)(E) and (a)(13)(i)(F), and by adding paragraphs (a)(13)(i)(G) and (a)(13)(i)(H) to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(1) * * *

(vii) If known, the name of the futures commission merchant through which the pool will execute its trades and, if applicable, the introducing broker through which the pool will introduce its trades to the futures commission merchant; and

* * * * *

(3) * * *

(i) * * *

(E) Any futures commission merchant through which the pool's trades will be executed;

(F) Any principal of the futures commission merchant;

(G) Any introducing broker through which the pool will introduce its trades to the futures commission merchant; or

(H) Any principal of the introducing broker.

included in the description of such conflict shall be any arrangement whereby the commodity pool operator, commodity trading advisor, or the principals thereof may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant or from the introduction of the pool's account to a futures commission merchant by an introducing broker.

(13) * * *

(i) * * *

(E) The pool's futures commission merchant;

(F) Any principal of the pool's futures commission merchant;

(G) The pool's introducing broker, if applicable; and

(H) Any principal of the pool's introducing broker.

* * * * *

35. Section 4.23 is 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.

* * * * *

36. Section 4.31 is amended by revising paragraphs (a)(1)(iv), (a)(5)(i)(C), (a)(5)(i)(D), the concluding paragraph of paragraph (a)(5)(i), paragraphs (a)(7)(i)(C), and (a)(7)(i)(D), and by adding paragraphs (a)(7)(i)(E) and (a)(7)(i)(F) to read as follows:

§ 4.31 Disclosure to prospective clients.

(a) * * *

(1) * * *

(iv)(A) The name of the futures commission merchant with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant with which it will maintain its account, the commodity trading advisor must make a statement to that effect; and

(B) The name of the introducing broker through which the commodity trading advisor will require the client to introduce its account or, if the client is free to choose the introducing broker through which it will introduce its account, the commodity trading advisor must make a statement to that effect; and

* * * * *

(5) * * *

(i) * * *

(C) Any futures commission merchant with which the client will be required to maintain its commodity interest account and any principal of the futures commission merchant; or

(D) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant and any principal of the introducing broker.

Included in the description of such conflict shall be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant or the introduction of that account through an introducing broker.

* * * * *

(7) * * *

(i) * * *

(C) The futures commission merchant with which the client will be required to maintain its commodity interest account;

(D) Any principal of the futures commission merchant;

(E) The introducing broker through which the client will be required to introduce its account to the futures commission merchant; and

(F) Any principal of the introducing broker.

* * * * *

37. Section 4.32 is 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

38. Section 10.1 is amended by revising paragraph (a) to read as follows:

§ 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

39. Section 15.00 is 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.

* * * * *

40. Section 15.05 is 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 or cause to be opened a futures or options contract account for, or to effect or cause to be effected 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 the opening of an account for the foreign broker or foreign trader or the effecting of a transaction 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 NW., 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 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

41. Section 17.01 is amended by revising paragraph (b)(12) to read as follows:

§ 17.01 Special account designation and identification.

* * * * *

(b) * * *

(12) The name and business telephone number of the associated person of the futures commission merchant who has solicited and is responsible for the account or, in the case of an introduced account, the name and business telephone number of the introducing broker which introduced the account.

* * * * *

PART 18—REPORTS BY TRADERS

42. Section 18.04 is amended by revising paragraph (a)(7) to read as follows:

§ 18.04 Statement of reporting trader.

* * * * *

(a) * * *

(7) The names and locations of all futures commission merchants, introducing brokers, and foreign brokers through whom accounts owned or controlled by the reporting trader are carried or introduced at the time of filing a Form 40, if such accounts are carried through more than one futures commission merchant or foreign broker or carried through more than one office of the same futures commission merchant or foreign broker, or introduced by more than one introducing broker clearing accounts through the same futures commission merchant, and

the name of the reporting trader's account executive at each firm or office of the firm.

* * * * *

43. Part 21 is retitled to read as follows:

PART 21—SPECIAL CALLS

44. Section 21.01 is 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.

45. Section 21.02 is 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

* * * * *

46. Section 21.03 is amended by revising paragraphs (a), (b), the introductory paragraph of (e), the introductory paragraphs of (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 provides 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 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

47. Section 33.3 is amended by revising paragraphs (b)(1)(i)(B) and (b)(1)(ii), by adding paragraph (b)(1)(iii), and by revising paragraph (b)(2) to read as follows:

§ 33.3 Unlawful commodity option transactions.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Is a member of a futures association registered under Section 17 of the Act which has adopted rules which the Commission has approved under Section 17(j) of the Act and, in addition to the requirements of that Section, has determined to provide for the regulation of the commodity option related activity of its member futures commission merchants in a manner equivalent to that required of contract markets under these regulations; or

(ii) Registered as an introducing broker under the Act, and either:

(A) Is a member of a futures association registered under Section 17 of the Act which has adopted rules which the Commission has approved under Section 17(j) of the Act, or is a

member of a contract market which has adopted rules which the Commission has approved under Section 5a(12) of the Act, and which, in addition to the requirements of those Sections, has determined to provide for the regulation of the commodity option related activity of its member introducing brokers in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(B) Is operating pursuant to a guarantee agreement, and the futures commission merchant which has signed such agreement is a member of a self-regulatory organization that has adopted rules which the Commission has approved that provide for the regulation of the commodity option related activity of the introducing broker in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(iii) An individual registered as an associated person of a specified person registered as a futures commission merchant or as an introducing broker under the Act who meets the requirements of paragraph (b)(1)(i) or (b)(1)(ii), respectively, of this section, and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked.

(2) Any person registered or required to be registered as a futures commission merchant or as an introducing broker under the Act to permit another person to become or remain associated with such person as a partner, officer, employee, agent or representative (or in any status or position involving similar functions) in any capacity involving the solicitation or acceptance of an order from an option customer (other than in a clerical capacity) for any commodity option transaction, or the supervision of any person or persons so engaged, if such person knows or should have known that such other person is or was not registered as required by this Part or that such registration has expired, been suspended (and the period of suspension has not expired) or been revoked.

48. Section 3.4 is amended by revising paragraph (b)(4)(ii) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

* * * * *

(b) * * *

(4) * * *

(ii) Make and retain a record of the date the complaint was received, the associated person who serviced, or the introducing broker who introduced, the account, a general description of the matter complained of, and what, if any, action was taken by the futures commission merchant in regard to the complaint; and

* * * * *

49. Section 33.7 is amended by revising paragraph (a), the introductory paragraph of paragraph (b), and paragraphs (b)(2), (b)(2)(iii), (b)(2)(iv), (b)(2)(vii), (c), (e), (f) and (g) to read as follows:

§ 33.7 Disclosure.

(a) No futures commission merchant or, in the case of an introduced account, no introducing broker may open or cause the opening of a commodity option account for an option customer unless the futures commission merchant or introducing broker (1) furnishes the option customer with a separate written disclosure statment as set forth in this section and (2) receives from the option customer an acknowledgment signed and dated by the option customer that he received and understood the disclosure statement. The disclosure statement and the acknowledgment shall be retained by the futures commission merchant or the introducing broker in accordance with §1.31 of this chapter. The disclosure statement must be as set forth in paragraph (b) of this section, double spaced (except for paragraphs (b)(2)(i) through (b)(2)(viii) under "Description of Commodity Options" which may be single spaced), typed or printed in type of not less than 10-point size, and, where indicated, in all capital letters.

(b) The disclosure statement must read as follows:

OPTIONS DISCLOSURE STATEMENT

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE AND GRANTING OF COMMODITY OPTIONS INVOLVE A HIGH DEGREE OF RISK. COMMODITY OPTION TRANSACTIONS ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO HAVE READ AND UNDERSTOOD THIS DISCLOSURE STATEMENT AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS AND OF THE RISKS INVOLVED IN THE OPTION TRANSACTIONS COVERED BY THIS DISCLOSURE STATEMENT.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS AN OPTION WHICH, IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN "OPTION ON A FUTURES CONTRACT") OR RESULTS IN THE MAKING OR TAKING OF DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION (AN "OPTION ON A PHYSICAL COMMODITY"). BOTH THE PURCHASER AND THE GRANTOR OF AN OPTION ON A PHYSICAL COMMODITY SHOULD BE AWARE THAT, IN CERTAIN CASES, THE DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION MAY NOT BE REQUIRED AND THAT, IF THE OPTION IS EXERCISED, THE OBLIGATIONS OF THE PURCHASER AND GRANTOR WILL BE SETTLED IN CASH.

A PERSON SHOULD NOT PURCHASE ANY COMMODITY OPTION UNLESS HE IS ABLE TO SUSTAIN A TOTAL LOSS OF THE PREMIUM AND TRANSACTION COSTS OF PURCHASING THE OPTION. A PERSON SHOULD NOT GRANT ANY COMMODITY OPTION UNLESS HE IS ABLE TO MEET ADDITIONAL CALLS FOR MARGIN WHEN THE MARKET MOVES AGAINST HIS POSITION AND, IN SUCH CIRCUMSTANCES, TO SUSTAIN A VERY LARGE FINANCIAL LOSS.

A PERSON WHO PURCHASES AN OPTION SHOULD BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM THE OPTION, IT WILL BE NECESSARY EITHER TO OFFSET THE OPTION POSITION OR TO EXERCISE THE OPTION. IF AN OPTION PURCHASER DOES NOT UNDERSTAND HOW TO OFFSET OR EXERCISE AN OPTION, THE PURCHASER SHOULD REQUEST AN EXPLANATION FROM THE FUTURES COMMISSION MERCHANT OR THE INTRODUCING BROKER. CUSTOMERS SHOULD BE AWARE THAT IN A NUMBER OF CIRCUMSTANCES, SOME OF WHICH WILL BE DESCRIBED IN THIS DISCLOSURE STATEMENT, IT MAY BE DIFFICULT OR IMPOSSIBLE TO OFFSET AN EXISTING OPTION POSITION ON AN EXCHANGE.

THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THAT ALL CUSTOMERS RECEIVE AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT BUT DOES NOT INTEND THIS STATEMENT AS A RECOMMENDATION OR ENDORSEMENT OF EXCHANGE-TRADED COMMODITY OPTIONS.

Contents of Disclosure Statement

1. Some of the risks of option trading
2. Description of commodity options
3. The mechanics of option trading
4. Margin requirements
5. Profit potential of an option position
6. Deep-out-of-the-money options
7. Glossary of terms

* * * * *

(2) *Description of commodity options.* Prior to entering into any transaction involving a commodity option, an individual should thoroughly understand the nature and type of option and the underlying futures contract or underlying physical commodity involved. The futures commission merchant or the introducing broker is required to provide, and the individual contemplating an option transaction

should obtain, a description of the following:

* * * * *

(iii) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise. (The latest time on an expiration date when an option may be exercised may vary; therefore, option market participants should ascertain from their futures commission merchant or their introducing broker the latest time the firm accepts exercise instructions with respect to a particular option.);

(iv) A description of the purchase price of the option including the premium, commissions, costs, fees and other charges. (Since commissions and other charges may vary widely among futures commission merchants and among introducing brokers, option customers may find it advisable to consult more than one firm when opening an option account.);

* * * * *

(vii) A clear explanation and understanding of any clauses in the option contract and of any items included in the option contract explicitly or by reference which might affect the customer's obligations under the contract. This would include any policy of the futures commission merchant or the introducing broker or rule of the exchange on which the option is traded that might affect the customer's ability to fulfill the option contract or to offset the option position in a closing purchase or closing sale transaction (for example, due to unforeseen circumstances that require suspension or termination of trading); and

* * * * *

(c) Prior to the entry of the first commodity option transaction for the account of an option customer, a futures commission merchant or an introducing broker, or the person soliciting or accepting the order therefor, must provide an option customer with all of the information required under the disclosure statement: *Provided*, The limitations, if any, on the transfer of an option customer's account to a futures commission merchant other than the one through whom the commodity option transactions are to be executed must be provided in writing: *Provided further*, That the futures commission merchant or the introducing broker, or the person soliciting or accepting the order therefore, must provide current information to an option customer if the information provided previously has become inaccurate.

* * * * *

(e) A futures commission merchant and an introducing broker must establish the necessary procedures and supervision to ensure compliance with the requirements of this section.

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

(g) For purposes of this section, neither a futures commission merchant nor an introducing broker shall be deemed to be an option customer.

50. Section 33.8 is revised to read as follows:

§ 33.8 Promotional material.

Each futures commission merchant and each introducing broker shall retain, in accordance with § 1.31 of this chapter, all promotional material it provides, directly or indirectly, to option customers as well as the true source of authority for the information contained therein.

PART 145—COMMISSION RECORDS AND INFORMATION

51. Section 145.5 is amended by adding paragraphs (d)(l)(i)(D) and (d)(l)(i)(E) to read as follows:

§ 145.5 Nonpublic matters.

* * * * *

(d) * * *
(l) * * *
(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 § 1.10(h) of this chapter, if the procedure set forth in § 1.10(g) of this chapter 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 § 1.16(c)(5) of this chapter;

(E) The following portions, and footnote disclosures thereof, of the financial report filed pursuant to § 1.10(i) of this chapter, if the procedure set forth in § 1.10(g) of this chapter is followed: All information except for the balance sheet, the grain commission firm's opinion, and the statement of the computation of the minimum capital requirements pursuant to § 1.17 of this chapter;

* * * * *

PART 147—OPEN COMMISSION MEETINGS

52. Section 147.3 is amended by adding paragraphs (b)(4)(i)(A)(*4*) and (b)(4)(i)(A)(*5*) 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 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 § 1.10(h) of this chapter, if the procedure set forth in § 1.10(g) of this chapter 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 § 1.16(c)(5) of this chapter;

(*5*) The following portions, and footnote disclosures thereof, of the financial report filed pursuant to § 1.10(i) of this chapter, if the procedure set forth in § 1.10(g) of this chapter is followed: all information except for the balance sheet, the grain commission firm's opinion, and the statement of the computation of the minimum capital requirements pursuant to § 1.17 of this chapter;

* * * * *

PART 155—TRADING STANDARDS

53. Section 155.1 is 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.

54. Section 155.3 is 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 any 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 of all written records prepared upon the receipt of orders for such account pursuant to paragraph (c)(2) of this section.

* * * * *

55. Section 155.4 is added 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 autorized 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

56. The authority citation for Part 166 is revised to read as follows:

Authority: 7 U.S.C. 4, 6b, 6c, 6g, 6h, 6*l*, 6*o*, 12a, and 23.

57. Section 166.2 is 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 designated by the customer to control the account specifies (1) the precises 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.

58. Section 166.3 is revised to read as follows:

§ 166.3 Supervision.

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

59. Section 166.4 is added to read as follows:

§ 166.4 Branch offices.

Each branch office of each Commission registrant must use the name of the firm of which it is a branch for all purposes, and must hold itself out to the public under such name. The act, omission or failure of any person acting for the branch office, within the scope of his employment or office, shall be deemed the act, omission or failure of the Commission registrant as well as of such person.

PART 170—REGISTERED FUTURES ASSOCIATIONS

60. The authority citation for Part 170 is 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

61. Section 170.2 is 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.

62. Section 170.10 is added to 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.

Form 1–FR—[Amended]

63. Form 1–FR is amended by adding a Part B which will read as follows (Form 1–FR is not included in the Code of Federal Regulations):

Guarantee Agreement

In consideration for the introduction of customer and option customer accounts by ("IB"), an introducing broker, to ("FCM"), a futures commission merchant registered with the Commission as such, and in satisfaction of the adjusted net capital requirements with which the introducing broker otherwise would have to comply pursuant to Commission Regulation §1.17, 17 CFR 1.17, the futures commission merchant guarantees performance by the introducing broker of, and shall be jointly and severally liable for, all obligations of the introducing broker under the Commodity Exchange Act, as it may be amended from time to time, and the rules, regulations and orders which have been or may be promulgated thereunder with arespect to the solicitation of and transactions involving all customer and option customer accounts of the introducing broker entered into on or after the effective date of this agreement.

This guarantee agreement shall be enforceable regardless of the subsequent incorporation, merger or consolidation of either the futures commission merchant or the introducing broker, or any change in the composition, nature, personnel or location of the futures commission merchant or the introducing broker.

For purposes of this agreement only, the futures commission merchant shall be deemed to be the agent of the introducing broker upon whom process may be served in any action or proceeding against the introducing broker under the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

The futures commission merchant acknowledges that at the time of execution of this guarantee agreement there are not any conditions precedent, concurrent or subsequent affecting, impairing or modifying in any manner the obligations of the futures commission merchant hereunder, or the immediate taking effect of this agreement as the entire agreement of the futures commission merchant with respect to guaranteeing the introducing broker's obligations as set forth herein to the Commission and to the introducing broker's customers and option customers under the Commodity Exchange Act.

If this guarantee agreeement is filed in connection with an application for initial registration as an introducing broker, this agreement shall be effective as of the date registration is granted to the introducing broker. If this guarantee agreement is filed other than in connection with an application for initial registration as an introducing broker, it shall be effective as of the date agreed to by the futures commission merchant and the introducing broker as set forth below.

This guarantee agreement is binding and is and shall remain in full force and effect unless terminated in accordance with the rules, regulations or orders promulgated by the Commission with respect to such terminations. Termination of this agreement will not affect the liability of the futures commission merchant with respect to obligations of the introducing broker incurred on or before the date this agreement is terminated.

Dated:

Futures Commission Merchant _____

By:

_____

Sole Proprietor _____
General Partner _____
Chief Financial Officer _____
Chief Executive Officer _____

Dated:

Introducing Broker _____

By:

_____

Sole Proprietor _____
General Partner _____
Chief Financial Officer _____
Chief Executive Officer _____

Effective date:

* * * * *

Issued inWashington, D.C. on July 29, 1983, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-21004 Filed 8-2-83; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 3

Qualification for "No-Action" Position Regarding Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Rule-related notice of qualification for "no-action" position.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is publishing a list compiled by the National Futures Association ("NFA") of those former "agents" of futures commission merchants ("FCMs") which the NFA has determined qualify for the Commission's "no-action" position regarding the new registration category denoted "introducing broker." The procedures for obtaining that "no-action" position were set forth in a letter dated April 7, 1983 which the Commission transmitted to all registered FCMs, and additional notice thereof was published in the **Federal Register.** 48 FR 15890 (April 13, 1983).

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033K Street N.W., Washington, D.C. 20581. Telephone (202) 254–9703.

SUPPLEMENTARY INFORMATION: The Futures Trading Act of 1982 amended the Commodity Exchange Act ("CE Act") to eliminate, as of May 11, 1983, the former statutory category of unregistered "agents" of FCMs and to require such agents to register under the CE Act either as introducing brokers or, in the case of individuals as associated persons ("APs") of an FCM or of an introducing broker. *See* Futures Trading Act of 1982, Pub. L. No. 97–444, §§ 201, 207, 212 and 239, 96 Stat. 2297, 2302, 2303–05, 2327 (1983). However, when the Commission proposed rules to govern the new registration category of introducing broker (48 FR 14933 (April 6, 1983)), the Commission recognized that the former unregistered agents would not be able to become registered under the CE Act until the Commission adopted appropriate regulations and the processing of applications for

registration was completed. (The Commission adopted final rules to govern introducing brokers and associated persons of introducing brokers on July 29, 1983.) The Commission therefore sent a letter dated April 7, 1983 to all registered FCMs to advise those FCMs and their agents of procedures adopted by the Commission which, if complied with in every respect, would allow agents and the APs employed by agents to continue in business as introducing brokers and as APs of an FCM or as APs of an introducing broker, respectively. The Commission also published a notice of the procedures for obtaining that "no-action" position from the Commission in the **Federal Register** (48 FR 15890 (April 13, 1983)), as well as a subsequent interpretation of that "no-action" position (48 FR 19362 (April 29, 1983)). The Commission's letter to the FCMs stated that "[t]he Commission will publish in the **Federal Register** a list of all applicants who qualify for a nonaction position with respect to their registration as introducing brokers." 48 FR 15890, 15893 (April 13, 1983).

The Commission authorized the NFA, in accordance with statutory authority provided in the Futures Trading Act of 1982, to perform the registration processing functions associated with the "no-action" position which would otherwise have been performed by the Commission. *See* Futures Trading Act of 1982, Pub. L. No. 97–444, Section 224(6), 96 Stat. 2315, which adds new Section 8a(10) to the CE Act (to be codified at 7 U.S.C. 12a(10)). (The Commission has also authorized the NFA to perform the registration processing functions relating to applications for registration as an introducing broker or as an AP of an introducing broker filed by persons who were not previously agents of FCMs or employees of such agents.) The NFA has compiled a list of those former agents of FCMs which NFA has determined clearly qualify for the Commission's "no-action" position regarding introducing brokers. That list, which is set forth below, was compiled by NFA as of 2 p.m., Central Time, on July 22, 1983, and contains only those persons deemed clearly eligible for the "no-action" position by NFA. The Commission has not independently verified the accuracy of the list compiled by NFA.

The Commission wishes to remind those persons whose names appear on the list compiled by NFA that the Commission's "no-action" position will terminate automatically if an applicant for registration as an introducing broker fails to achieve and demonstrate compliance with the minimum financial requirements for introducing brokers by October 31, 1983. The basic minimum financial requirement is the greater of $20,000 of adjusted net capital or, if the firm is also a securities broker or dealer, the amount of net capital required by the securities and Exchange Commission ("SEC"). Compliance with the basic minimum adjusted net capital requirement must be demonstrated by filing a certified financial report. An applicant for registration as an introducing broker may comply with the alternative minimum adjusted net capital requirement by entering into a guarantee agreement with an FCM. A certified financial report or a guarantee agreement must be filed by an applicant for registration as an introducing broker with the NFA and a copy of the that report must be sent to the regional office of the Commission nearest the principal place of business of the applicant.

Furthermore, the Commission's "no-action" position may be terminated by notice from the Commission's Division of Trading and Markets or from the NFA. Finally, the "no-action" position will terminate upon the introducing broker's registration under the CE Act.

The NFA has determined that the following firms and individuals are clearly qualified for the Commission's "no-action" position regarding introducing brokers:

Abele, Ted. M., D.B.A. Amer. Agrinomics
ACLI Government Securities, Inc.
ACLI International Incorporated
Adams, Harkness & Hill, Inc.
Adams, James, Foor & Company, Inc.
Advance Trading, Inc.
Advanced Commodity Systems Corp.
Affiliated Investors Service Inc.
Affiliated Security Brokers
Ag Com, Inc.
Ag Marketing Inc.
Ag-Com Inc.
Agmark Inc.—IND
Agmark, Inc.
Agri-Hedging, Inc.
Agri-Market Research, Inc.
Agricultural Consultants Inc.
Agrifutures Inc.
Alabama Farm Bureau Service, Inc.
Albert, Dave Commodities
Alcom Investments Inc.
All West Commodities Inc.
Allister, McMillan & Brookes
Alpha Com
Amendt, George E. Company
American Futures Corporation
American International Commodities Corp.
American Transeuro Corporation
Americom Corporation
Andover Commodities Inc.
Andrews Commodities
Anglo-American Investment Corporation
Apache Marketing Corporation
Arbor Trading
Arlington-Interurban Securities
Arnet-McCabe & Co., Inc.
Atlanta Commodity Corporation
Aud, Dennis W.
Austin, Gordon Company
Austin-Cooper Commodities, Inc.
B & J Commodities—CO
B & L Commodities Inc.
Bachman & Associates
Bacon Whipple & Co., Inc.—NY
Bacon Whipple & Co., Inc.—CHI
Baird, Robert W. & Co., Inc.
Baker, James & Co.
Barclay Investments Inc.
Barrington Trading Co.
Basin Commodities
Bassett Commodities
Baum & Company, George K.
Becker Commodites Inc.
Benchmark Investments of Colorado Inc.
Bertoncini, Michael
Betar, Waddell & Company
BGD Corporation
Birkhofer & Company, Inc.
Bishop, Kevin J.
Black, James L & Company
Blalock & Blevin Futures Services
Blasdel & Company, Inc.
Bloch Co., Ted C.
Boddicker, James A.—c/o Heinold Comm.
Boice-Roberts Company
Bonnett, John Associates,
Booge Commodities Inc.
Borderline Commodities
Branch Cabell & Co.
Brean Murray Foster Securities
Britton Brokerage Group
Broder Oil Futures, Inc.
Brook Commodities
Brown, David I. & Associates
Brown, R. H. Investments, Inc.
Brungardt Commodities
Buckley, Zwick Co.
Buinauskas, Peter L. & Co.
Bull Market Commodities Inc.
Butler Commodities, Ltd.
Buttonwood Securities Corp. of Mass.
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Cash Futures & Options Inc.
Castellano, Michael J.
Centennial Commodities Inc.
Central Iowa Trading Co.
Central States Commodities
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Certified Commodities, Inc.
CFI Investment Company
Chicago Commodities, Inc.
Chicago Commodity Corp.
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Chowanoc Managment Co., Inc.

Churchill Commodities, Ltd.
Clark & Associates Securities, Inc.
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Clarke Commodities—TX
Clayton Brown & Assoc. Inc.
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Climbing Hill Commodities
Collins, Locke & Lasater, Inc.
COM-PAC Corporation, The
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Commodity Brokerage Services Inc.
Commodity Brokerage, Inc.
Commodity Consultants
Commodity Corp. of Ann Arbor, Inc.
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Commodity Counselors
Commodity Futures Inc.—CAL
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Commodity Futures, Inc.—SD
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Continental American Securities, Inc.
Conway, Luongo, Williams, Inc.
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Countryside Commodities
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Crestwood Capital Management
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DeNigris, Paul R. & Co. Inc.
Denver Grain Company Inc.
Devick, Randall J, Jr.
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Dillon-Gage Inc. of Dimmitt
Doft & Co. Inc.
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Envest Oil Co. Inc.
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Fabers Futures Inc.
Fairfield Investors Service, Inc.
Farmers Grain & Livestock Corp.
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First Invest
First Los Angeles Cmdts. & Stocks Inc.
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First New York Resource Mgt. Corp.
First of Michigan Corporation
First Securities of West Monroe, Inc.
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Foster Investments
Freisen, Richard Commodities
Fridlund Securities Co.
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Futures & Cash Commodities Inc.
Futures Management Company
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Greenleaf Investment Inc.
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Greentree Commodities Corp.
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Hagerty, Stewart and Associates, Inc.
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Hummer & Co., Wayne
Hunt/Martin & Assoc.
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Individual's Securities Ltd.
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International Futures, Ltd.
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Jack White 7 Company Inc.
Jackson, Wall & Spring Investments, Inc.
Janney Montgomery Scott, Inc.
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Jefferson, Daniel
Jesup & Lamont Securities Co. Inc.
JJB Hillard W. L. Lyons, Inc.
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Kass, Kenneth & Co., Inc.
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Meyers, H. J. & Co.
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Midwest Commodity Merchants & Traders
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Midwest Livestock Marketing Systems, Inc.
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Miller, Jr., Walter Benjamin
Minden Commodities, Inc.
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Morgan, Myers & ReBar, Inc.
Morrison, Schulte & Co. Inc.
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MTM Commodities Inc.
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Neal Investment Services, Inc.
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Noble House Group, Inc., The
Noble, Charles
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North American Investment Corporation
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Northfield Investments, Inc.
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Procom, Inc.
PROCOMCO
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Pullman Commodities
PVT Corporation
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Rainey Commodities, Inc.
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Rotan Mosle, Inc.
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Sand Mountain Commodities
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Scott Commodities Corp.
Scottsdale Commodities
Searle Marketing Service, Inc.
Securities-West, Inc.
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Shalowitz Commodities
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Schultz Commodities
Sierra Valley, Inc
Siglin Enterprises
Simmons, James B.
Sinclair, James E.
Singer, Engler & Kupfer Securities, Inc.
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Com-Stock Trading, Ltd.
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Spencer, JM & Co.
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Thayer Trading
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Tri-County Commodities, Inc.
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U.S. Futures Corporation
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Universal Commodities
Vanek, Gregory T.
Vincent, Burton J., Chesley & Co.
Vining-Sparks Securities, Inc.
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Walker Smith Enterprises, Inc.
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Warsaw Commodities Inc.
Wear, Richard F.
WEBCO Commodities Inc.
Weber, Hall, Sale & Associates, Inc.

Webster's Commodity Service
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Weed, A.J. & Co. Inc.
Wendell Financial Services, Inc.
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West African Mines
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West Port Commodities, Inc.
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White, Robert T. Jr.
White, Ken Commodities, Inc.
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Worthington Commodity Brokerage
Wright, Commodities Dan
York Securities, Inc.
Young, Cooper & Cooper Commodity Co.
Zellman Commodities
Zeunert, Robert H.
Zwilinger & Associates

List of Subjects in 17 CFR Part 3

Introducing brokers.

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

Jane K. Stuckey,

Secretary of the Commission.

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