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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 39

[Docket No. 91-CE-94-AD; Amendment 39-8270; AD 92-13-01]

Airworthiness Directives; Aerostar Aircraft Corporation PA-60-600 and PA-60-700 Series (formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series airplanes. This action requires an inspection of the nose landing gear drag brace for corrosion, replacement of any corroded components, and replacement of the spring and piston in the lower drag link of the nose landing gear drag brace assembly. The Federal Aviation Administration (FAA) has received several reports of corrosion in the spring and piston in the lower drag link of the nose landing gear drag brace assembly. The actions specified by this AD are intended to prevent failure of the nose landing gear caused by corroded parts, which could lead to nose gear collapse and damage to the airplane.

DATES: Effective July 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455-8872. This information may also be

examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1801 Lind Avenue SW., Renton, Washington 98055-4056; Telephone (206) 227-2589.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series airplanes was published in the Federal Register on January 21, 1992 (57 FR 2233). The action proposed an inspection of the nose landing gear drag brace assembly for cracks, replacement of any corroded components, and replacement of the existing spring and piston with new corrosion resistant parts. The actions would be done in accordance with Aerostar Service Bulletin No. 600-121, dated September 12, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter is an operator of 16 of the affected airplanes and expresses that the problem goes beyond what is addressed in this AD action. The commenter states that (1) the moisture in the hydraulic cylinder of the nose landing gear drag brace assembly is subject to freezing as well as corrosion; (2) this freezing moisture is the reason for the collapse of the nose gear of the two airplanes that prompted this AD; and (3) the problem should be corrected by drilling a drain hole into the bottom of the cylinder.

The FAA concurs that the subject of freezing moisture within the hydraulic cylinder of the nose landing gear drag brace assembly is a potential problem. Even though the FAA has not received any other reports of moisture freezing in the hydraulic cylinder of these assemblies, the FAA is currently investigating this situation. However, the FAA has determined that the inspection for corrosion of the nose landing gear drag brace assembly and replacement of any corroded parts should not wait for the results of this investigation in order to prevent failure of the nose landing gear caused by

corroded parts. In addition, the FAA has determined that the solution proposed by the commenter is not practical because there is no location for the drain hole where it will provide adequate drainage without causing a hydraulic leak when the cylinder is actuated. Additional AD action may be taken in the future concerning the subject of freezing moisture within the hydraulic cylinder of the nose landing gear brace assembly.

After careful review of all information relating to the proposed AD including the comment discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 375 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately \$55 an hour. Parts cost approximately \$96 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$118,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-13-01 Aerostar Aircraft Corporation: Amendment 39-8270; Docket No. 91-CE-94-AD.

Applicability: The following model and serial numbered airplanes, certificated in any category:

Model	Serial Nos.
*PA-60-600	60-0001-003 through 60-0608-7961195.
PA-60-600	60-0614-7961196 through 60-0933-8164262.
*PA-60-601	61-0001-004 through 60-0605-7962136.
PA-60-601	61-0611-7962137 through 61-0880-8162157.
*PA-60-601P	61P-0157-001 through 61P-0910-7963274.
PA-60-601P	61P-0912-7963275 through 61P-0859-8163455.
PA-60-602P	62P-0750-8165001 through 60-8365021.
PA-60-700P	60-8423001 through 60-8423025.

* = that have been converted to Wiebel nose gear system (Option No. 199)

Note 1: The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the nose landing gear caused by corroded parts, which could lead to nose gear collapse and damage to the airplane, accomplish the following:

(a) Inspect the nose landing gear drag brace assembly for corrosion in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin No. 600-121, dated September 12, 1991. Replace any corroded component in accordance with the Aerostar Maintenance Manual, and replace the existing spring and piston with a new

corrosion resistant spring and piston in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin No. 600-121, dated September 12, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(d) The inspection and replacements required by this AD shall be done in accordance with Aerostar Service Bulletin No. 600-121, dated September 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(e) This amendment (39-8270) becomes effective on July 24, 1992. Issued in Kansas City, Missouri, on May 27, 1992.

Larry D. Malir,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-12800 Filed 6-1-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION**17 CFR Parts 1 and 3****Adverse Registration Actions and Other Registration Matters**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On August 2, 1991, the Commodity Futures Trading Commission (Commission) published proposed amendments to its rules concerning adverse registration actions and other registration matters and allowed sixty days for comments thereon.¹ The Commission has carefully

considered the comments received and, based upon its review of the comments and its own reconsideration of the issues, has determined to adopt the rules essentially as proposed, with the following principal changes: (1) Elimination of the proposed requirement that contract markets notify the Commission where they "should have known" of events constituting a statutory disqualification for floor brokers; (2) substitution of biennial, for annual, floor broker registration updates; (3) clarification that the Commission's burden to show that a respondent is subject to a statutory disqualification must be met by a "preponderance of the evidence"; (4) clarification of the special registration process; (5) expansion of the availability of the exclusion from the fingerprint requirement for certain natural persons who are ten percent or more owners of a non-natural person principal of an applicant; and (6) rendering the exemption from the fingerprint requirement for certain outside directors perfected upon filing of certain information with the National Futures Association (NFA), rather than requiring a petition for exemption.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Scott L. Diamond, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:**I. Background**

The Commission's decision in *In re Kangles and Chamberlain* called for equal treatment of applicants and registrants who are subject to statutory disqualification.² In that case, the Commission stated that "our registration process should use uniform substantive standards to assess the fitness of disqualified applicants seeking entry into the futures industry and disqualified registrants seeking retention in the industry."³ As a result, the Commission is amending its rules relating to statutory disqualifications from registration of industry professionals to accomplish this result.

In addition to amending its rules governing statutory disqualification procedures, the Commission has amended its rules relating to several other provisions of the rules governing

² *In re Kangles and Chamberlain*, [Current Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990).

³ *Id.*, at 37,028 (footnote omitted).

¹ 58 FR 37026.

the registration process. Based upon its administration and oversight of the registration process, the Commission has determined that these areas of the rules should be clarified and simplified. Some of these amendments will serve to codify or expand the availability of relief made available on a case-by-case basis by the Commission's Division of Trading and Markets (Division) pursuant to delegated authority. The amendments include, among others: codification of exemptions from the restrictions on dual and multiple associations of associated persons (APs); codification of positions exempting: (1) Corporate officers with no direct supervisory responsibilities from AP registration under certain circumstances, (2) APs from being required to re-register when they gain a new sponsor due to events such as a merger or acquisition of the sponsoring firm, and (3) firms from being required to re-register because of a corporate reorganization where there is no change in the natural person principals; requiring a Form 8-R and fingerprint card from certain natural person principals of an entity that is a non-natural person principal of a firm applying for registration, unless the non-natural person is a publicly-held company or an otherwise regulated entity; simplified registration procedures for persons who will confine their activities under the Commodity Exchange Act (Act) to specified products; and clarifying that a futures commission merchant that has entered into a guarantee agreement with an IB must carry all of the customer accounts introduced by the IB.

The Commission received eight written comments in response to the proposed rulemaking. The commenters included five contract markets (Chicago Board of Trade, Commodity Exchange, Inc., Coffee, Sugar & Cocoa Exchange, Inc., New York Cotton Exchange and New York Mercantile Exchange), the Committee on Futures Regulation of the American Bar Association, an industry trade association (Futures Industry Association), and the NFA. All commenters expressed general support for this rulemaking proceeding. The comments received on particular aspects of the proposals are discussed below in the context of the specific rule to which they relate. The Commission has carefully reviewed each of these comments and, based upon that review and its careful reconsideration of the proposals, is now adopting rules which it believes are responsive to the concerns of the commenters and the

regulatory objectives of this rulemaking process.

The following discussion focuses on the changes or clarifications to the proposals in the final rules as adopted. Those provisions not discussed specifically were not commented upon and are being adopted as proposed. Additional background on these final rules may be found in the Federal Register release setting forth the proposals.⁴

II. Statutory Disqualifications

A. Rule 3.60—Procedure To Deny, Condition, Suspend, Revoke or Place Restrictions Upon Registration Pursuant to Sections 8a(2), 8a(3) and 8a(4) of the Act—General

In general, the amended Rule 3.60 sets forth procedures applicable to statutory disqualification proceedings pursuant to section 8a(2), 8a(3) and 8a(4) of the Act, and is intended to create procedural equality between applicants and registrants subject to statutory disqualification under those sections of the Act. Rule 3.60 will now permit an applicant who is subject to a section 8a(2) statutory disqualification to introduce evidence of mitigation and rehabilitation in order to rebut the presumption of unfitness created by the underlying offense, rights currently afforded to all registrants subject to statutory disqualification and to those applicants subject to statutory disqualification under section 8a(3) of the Act.

The two commenters who addressed this section generally supported the Commission's effort to amend Rule 3.60 to provide greater procedural equality between applicants and registrants and to streamline the disqualification process. One commenter lauded the Commission's efforts in this area (and also with respect to the other part 3 amendments) and urged the adoption of the proposed amendments to Rule 3.60, subject to the comment letters. The other commenter specifically supported the Commission's statement in the preamble to the proposed rules,⁵ which the Commission hereby reiterates, that an applicant's or registrant's willful, material false or misleading statements or omissions of material facts about a statutory disqualification in his registration application can constitute separate grounds for disqualification under sections 8a(2)(G) and 8a(3)(G) of the Act and impact the applicant's or registrant's showing of mitigation or rehabilitation.

The first commenter referred to above who addressed Rule 3.60 generally "urge[d] the CFTC, in the event this rulemaking results in the promulgation of amendments to its registration rules, to express strongly its desire that the NFA adopt rules similar to those of the CFTC, without undue delay." The Division has been in contact with NFA staff to assure that conforming changes in registration forms and NFA registration processing procedures will be in place by the July 1, 1992 effective date of these rule amendments. The Commission is also aware that NFA is proceeding expeditiously to adopt conforming amendments to its registration rules to take account of these amendments to the Commission's rules.

B. Rule 3.60—Filing Deadlines

Rule 3.60 as proposed established a 30-day deadline for filing by the applicant or registrant of a response to the Commission's notice that the applicant or registrant is subject to statutory disqualification, and a 30-day deadline for reply by the DOE to the applicant's or registrant's response to the notice of adverse registration action.

Two commenters specifically addressed the proposed filing periods. One commenter questioned whether thirty days is sufficient time for DOE to reply to the applicant's or registrant's response to the notice of adverse registration action. After due consideration, the Commission has determined that thirty days generally is sufficient time for DOE to reply to the applicant's or registrant's response, and is adopting Rule 3.60 with filing deadlines as proposed. However, in light of another commenter's objection to the inclusion of filing deadlines in the proposed rules without a statement indicating the Commission's willingness to consider reasonable requests for extensions of time, the Commission has determined to amend Rule 3.61 to allow for extension of filing deadlines in statutory disqualification proceedings for good cause shown.⁶

C. Rule 3.60(e)—Determination by the Administrative Law Judge—Standards of Proof

As proposed, Rule 3.60(e) would provide for different burdens of proof, depending upon whether the underlying offense constitutes a statutory

⁴ The Commission has also determined to amend Rule 3.50(a) to conform to the provisions of Rule 10.12(a)(2) by providing that where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three days.

⁵ 56 FR 37028.

⁶ 56 FR 37028, at 37028.

disqualification under sections 8a(2) or 8a(3) and 8a(4) of the Act. Pursuant to proposed Rule 3.60(e)(1), an applicant or registrant subject to an 8a(2) statutory disqualification must make a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public, whereas, under proposed Rule 3.60(e)(2), an applicant or registrant subject to statutory disqualification under 8a(3) or 8a(4) of the Act must make his case by a preponderance of the evidence. This distinction in the burden of proof reflects existing Commission regulations and relevant case-law.⁷

One commenter raised several questions regarding the different burdens of proof. The commenter requested clarification as to whether the clear and convincing standard is applicable to a challenge to the factual basis for the presumption of unfitness, e.g., the fact of conviction. The commenter recommended that the determination as to whether a statutory disqualification exists be based on a preponderance of the evidence standard in all cases. In response to this comment and its own reevaluation of the issue, the Commission has added language to the introductory paragraph of Rule 3.60(e) to provide in the final rule that in both 8a(2) and 8a(3) statutory disqualification cases, the Administrative Law Judge (ALJ) shall specifically consider whether DOE has shown by a preponderance of the evidence the existence of a statutory disqualification with respect to the applicant or registrant as set forth in the notice issued by the Commission. This showing applies only to the fact of a conviction, judgment or other disqualification specified in the Act and does not require nor is it to be used as an opportunity for the re-litigation of the underlying facts that led to the conviction or judgment.

The commenter also stated that specifying the burden of proof standard would hinder the decision-making flexibility of the Commission, the NFA and ALJs in deciding statutory disqualification cases. The commenter requested that no specific burden of proof standard be codified. The Commission, after careful analysis of the comments, and existing precedent, has determined that Rule 3.60(e) should maintain differing burdens of proof in this area for 8a(2) and 8a(3) statutory disqualification cases, as proposed. Such differentiation reflects the

structure of the statute and existing case precedents. Decision-makers will retain flexibility to apply the relevant law to the facts of each case.

D. Rule 3.60(k)—Incorporation by Reference of Certain Part 10 Procedures

The proposed amendments to part 3 would have deleted existing Rules 3.56 and 3.61(a). In general, those rules provide that part 10 (17 CFR part 10 (1991)) shall not apply in proceedings under 8a(2) but shall apply in proceedings under 8a(3). The amended part 3 rules establish unified procedures for all statutory disqualification proceedings and specifically incorporate particular part 10 rules. For example, new Rule 3.60(d)(2) governing hearings refers to Rules 10.61 through 10.81 and 10.83, and the appeal rule (3.60(j)) refers to provisions from sections 10.102 *et seq.*

The rule amendments as originally proposed were premised on the belief that such specific references would eliminate the need for a general rule on the applicability of part 10 procedures to statutory disqualification proceedings. However, upon assessment of the comments, the Commission has determined that certain part 10 procedures which address matters such as formalities of filing, time calculation, and depositions should be made specifically applicable to statutory disqualification proceedings. Accordingly, the Commission has added a new paragraph (k) to Rule 3.60 in order to apply certain basic provisions of part 10 that were not otherwise listed in the part 3 amendments as proposed. This provision will formalize (with some limitations) present practice in 8a(3) proceedings under current Rule 3.61(a).

The Commission also notes that in establishing unified procedures for all statutory disqualification proceedings and identifying those sections of the Part 10 Rules of Practice that will apply, the rule amendments eliminate, as proposed, the present applicability (under current Rule 3.61(a)) of Rule 10.42(b) discovery in proceedings involving disqualifications under Section 8a(3) or 8a(4) of the Act. The obligation of the Division of Enforcement under Rule 10.42(b) to produce certain material will be replaced by the mutual exchange of information concerning witnesses and documents provided for in new Rule 3.60 (b) and (c). This procedure is similar to the exchange of "core information" encouraged by Executive Order 12778 on Civil Justice Reform (October 23, 1991). The Commission believes that this procedure will provide respondents in all statutory disqualification proceedings, whether brought under

section 8a(2), section 8a(3) or section 8a(4), with adequate information to prepare their defense and is consistent with the expedited nature and limited scope of issues in such proceedings.

E. Rule 3.63(b)—Timing and Procedure for Filing Petition for Review

Currently, Rule 3.63(b) provides that within fifteen days of the service of a final order, a party may file a petition for review with the Commission. The rule further addresses finality of the Commission's refusal to entertain such a petition.

Newly adopted Rules 3.60 (i) and (j) also govern the finality of, and appeal procedures with respect to, Commission orders. Specifically, these rules cross-reference the Commission's part 10 appellate procedures—to provide further consistency and clarity with respect to statutory disqualification appellate procedures and the procedures applicable to other administrative actions.

In order to avoid ambiguity, the Commission in adopting new Rules 3.60(i) and (j), has determined to delete Rule 3.63(b) and any reference thereto. Additionally, Rule 3.63(a) will be redesignated Rule 3.63, with no subparagraphs.

F. Rule 3.64—Procedures to Lift or Modify Conditions or Restrictions

Proposed Rule 3.64 would establish a procedure whereby a registrant whose registration is subject to conditions or restrictions may petition the Commission to lift or modify such conditions or restrictions. The rule would limit the registrant's showing to an affidavit that the conditions or restrictions have been satisfied in accordance with the order imposing such conditions or restrictions.

The commenter who addressed this rule specifically supported the Commission's objective of providing a registrant whose registration is subject to conditions or restrictions with procedures to petition to lift or modify such conditions or restrictions at a date no earlier than the date set by the ALJ in the initial decision. However, the commenter questioned the sufficiency of a thirty-day reply period for DOE and the factors on which the ALJ could make his determination. The commenter also stated that the rule places "undue emphasis" on whether the registrant has adhered to the conditions or restrictions rather than the question of "whether the conditions or restrictions remain necessary to protect the public." The commenter further suggested that the registrant should have the burden of

⁷ See generally, 56 FR 37026, at 37028 n.8, and accompanying text.

showing that his modified or full registration is in the public interest and, as part of this burden, be required to address any customer complaints against him which relate to the period of conditioned or restricted registration.

The Commission has determined to adopt Rule 3.64 as proposed. As stated in the preamble to the proposed rules, "[t]he registrant's showing in a petition to lift or modify conditions or restrictions shall be strictly limited to affidavits indicating that the conditions or restrictions have been fulfilled in accordance with the standards established in the ALJ's initial decision." * The Commission will continue this limitation in order to avoid a re-litigation of the statutory disqualification and focus the trier of fact upon issues appropriate to a post-adjudicative hearing. Where reporting of customer complaints is relevant to the conditions or restrictions imposed, the decisionmaker may, of course, consider such complaints. The burden of proof, as in most matters, is upon the moving party.

III. Other Registration Matters

A. Rule 1.62—Contract Market Requirement for Floor Broker Registration

Contract markets are required by Rule 1.62 to adopt and enforce rules assuring that only registered floor brokers (FBs) act as FBs on the floor of the contract market. The proposed amendments to Rule 1.62 would have required, among other things, a contract market to notify the Commission of any facts which could constitute a statutory disqualification with respect to an FB or applicant for registration as an FB within ten business days of when the contract market knew or should have known such facts.

Six of the eight commenters objected to the "should have known" language contained in the proposed amendments as creating an undue burden and asked that this standard be eliminated. Five of these commenters did not object to the requirement that an exchange notify the Commission based upon facts within the exchange's actual knowledge. In light of the concern expressed by the commenters, and in light of the Commission's belief that a duty to report facts constituting statutory disqualification based upon actual knowledge thereof is sufficient to

achieve the regulatory goal of ensuring that disqualified registrants are brought to the Commission's attention, the Commission has determined not to adopt the "should have known" standard in Rule 1.62.

B. Rule 3.1—Definition of the Term "Principal"

Current Rule 3.1(a)(3) defines the term "principal" to include, among other persons, "any person who has contributed ten percent or more of the [registrant's or applicant's] capital." The Commission's final rule clarifies that the latter provision applies generally to a person who has contributed capital by means of subordinated debt, with exclusions from the definition of the term "principal" for those contributors of subordinated debt that are FDIC-insured banks, U.S. branches of unaffiliated foreign banks subject to U.S. regulation, and insurance companies regulated under federal or state law, except where such institutions "control" the registrant or applicant in a manner that would otherwise bring them within the definition of the term "principal" under Rule 3.1(a)(1) or (a)(2).

One commenter recommended that the exclusion from the definition of principal for lenders of subordinated debt regulated under U.S. or state law be expanded "to include loans from all commercial lenders in the ordinary course of their business." The Commission has carefully considered this comment and believes that the proposal provides sufficient relief with respect to lenders of subordinated debt whose routine business encompasses such loans and who are subject to other regulatory frameworks. Accordingly, the Commission has determined to adopt the amendment to Rule 3.1(a)(3) as proposed.

C. Rule 3.10(a)—Application for Registration of Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

Under current Rules 3.13, 3.14, 3.15 and 3.17, natural persons who are principals of an applicant generally must file a Form 8-R and fingerprint card. However, where the principal of an applicant or registrant is not a natural person (e.g., a corporate holding company or a general partnership), the firm is required to provide the names of officers and directors or general partners of that entity. This leaves open the possibility that persons who could not meet the statutory fitness standards as individual principals of an applicant firm might be able to exercise control of

the firm through a corporate holding company or other entity. To address this concern, the Commission is adopting Rule 3.10(a)(2)(ii), which generally requires the filing of a Form 8-R and fingerprint card for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of an entity that is a nonnatural person listed on the Form 7-R of a firm applying for registration. Exemptions from this requirement are provided if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission (SEC), is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or the United States. The proposed rule also would permit NFA to waive the requirement to file a Form 8-R and fingerprint card if such natural person is a foreign national regulated by a foreign futures authority that agrees to provide information to the NFA concerning facts which would constitute a potential statutory disqualification and if such person is in good standing with the foreign futures authority.

Two commenters addressed proposed Rule 3.10. One commenter requested that the proposed rule be modified to provide that the Form 7-R include a list of all persons who ultimately control an applicant for registration, in order to harmonize Commission rules with those of the SEC.⁹ Under the SEC standard, where a beneficial owner is other than a natural person, disclosure of successive parents is required, unless and until there are no natural persons who beneficially own five percent or more of the equity. The Commission believes that the proposal was more consistent with its regulatory framework, and has determined to adopt Rule 3.10(a)(2)(ii) as proposed in this regard.

Additionally, both commenters addressed the procedure for exempting foreign nationals from the fingerprint requirement. One commenter requested a broader fingerprint exemption for persons residing outside of the United States. The commenter recommended expansion of the proposed exemption from the filing of a Form 8-R and

* 56 FR 37026, at 37029. Examples of conditions imposed on registrants include, among others, prohibitions on acting as a principal of a registered entity, exercising supervisory authority over any registered person and exercising discretionary authority over any customer account.

⁹ See SEC Form BD, which requires the listing on a schedule of the identities of all persons who ultimately control an applicant for registration, including all directors, executive officers, general partners and persons who beneficially own five percent or more of the equity of an applicant.

fingerprinting requirements contained in the proposed rule to include those subject to any foreign jurisdiction or agency which has been granted relief under Commission Rule 30.10.¹⁰ The Commission has determined to modify proposed Rule 3.10(a)(2)(ii) such that a natural person who is a foreign national who has been granted relief under Commission Rule 30.10, or who is an employee or a principal of a firm which has been granted such relief, would be eligible for an NFA waiver of the Form 8-R and fingerprint requirements.

The other commenter requested clarification as to certain aspects of this rule. Those aspects of the rule include: (1) The impact of the fitness of a natural person who owns ten percent or more of a non-natural person principal of the applicant on the applicant's fitness; (2) the requirement to update a Form 8-R by means of a Form 3-R; and (3) NFA's authority to waive the Form 8-R and fingerprint requirements where a foreign national or "other appropriate circumstances" are involved. In response to this comment, the Commission specifies that a non-natural person principal having a natural person who owns ten percent or more of the firm and is deemed unfit will itself be deemed unfit for listing as a principal.¹¹ As to the update issue on which the commenter requested clarification, the Commission believes that Rule 3.31(b) requires natural persons who own ten percent or more of a non-natural person principal to report changes to the information reported on Form 8-R by means of a Form 3-R, just as all persons who file a Form 8-R are required to update the information contained therein by means of a Form 3-R. The last item of the instructions to Form 8-R makes this duty clear.

This commenter requested clarification on two other points relevant to this rule. The commenter requested clarification of the treatment of foreign nationals under Rule 3.10(a)(2)(ii) in light of screening procedures previously arranged for principals of applicants who are natural persons residing abroad whereby requests are sent to foreign regulators for information concerning such persons

using the Form 8-R filing. The Commission finds no inconsistency here. The existing screening procedures apply to persons who are themselves principals of an applicant for registration and a Form 8-R is always required for such persons. New Rule 3.10(a)(2)(ii) applies only to natural person owners of an entity that is a non-natural person principal of an applicant, *i.e.*, persons at a level once removed from the applicant firm. The commenter also requested guidance as to the "other appropriate circumstances" under which NFA would waive the requirement for a Form 8-R and fingerprint card. The Commission believes that the specific provisions of this rule (and the parallel provisions of new Rule 3.32(a)(2)(ii)) contain appropriate relief in this area and, in light of the comment received, the Commission has determined to delete the clause referring to "other appropriate circumstances" as generally unnecessary. The Commission notes, however, that a person can apply to the Commission for relief if he believes his particular situation requires special consideration.

The Commission also wishes to note, although the point was not raised in any written comment, that Rule 3.10(a)(2)(ii) will apply only prospectively. Accordingly, current registrants need not amend their Forms 7-R by means of a Form 3-R, or include in any annual update, information required of new applicants under Rule 3.10(a)(2)(ii).

D. Rule 3.10(b)—Duration of Registration of Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

The proposed amendment to Rule 3.10(b) would clarify the effect of a registration suspension upon firms (*i.e.*, futures commission merchants (FCMs), introducing brokers (IBs), commodity trading advisors (CTAs), commodity pool operators (CPOs) and leverage transaction merchants (LTMs)) by providing that the registrant would not be deemed registered during the pendency of a registration suspension but that such a suspension would not have the effect of a revocation or withdrawal of registration. Proposed Rules 3.11(b) and 3.12(b) would apply the same treatment to suspended FBs and APs.

One commenter recommended clarification of proposed Rules 3.10(b), 3.11(b) and 3.12(b) insofar as they would suggest that the suspended person is not registered during the pendency of the suspension. The commenter contended

that the proposed text could have the unintended effect of depriving the Commission of reparations jurisdiction under section 14 of the Act, which extends only to registrants. The commenter suggested that these proposals be redrafted "to prohibit a registrant from acting in a registered capacity or holding himself out as a registrant during the suspension period." The Commission has determined to accept the substance of this recommendation, and the final rules are amended accordingly to prohibit a suspended registrant from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration. This language is consistent with section 4h of the Act.

The Commission also wishes to note that given the clarification of the effect of a registration suspension, it has determined that the special registration or temporary licensing procedures for an AP under new Rule 3.12(i) should apply only when the AP's registration is terminated because its previous sponsor's registration was revoked or withdrawn. As proposed, Rule 3.12(i) could also have applied in cases where the sponsor's registration was suspended. However, since the suspension of the sponsor's registration will only have the effect by itself of suspending and not terminating the AP's registration, the Commission has determined that Rule 3.12(i) is not applicable to an AP in such circumstances. Such an AP can transfer to a new sponsor in accordance with existing procedures.

E. Rule 3.11(d)—Annual Affirmation of Registration Information by Floor Brokers

Rule 3.11(d) as proposed would have required floor brokers to file annual registration updates by reviewing NFA printouts of information contained in the registration files, as is currently required for FCMs, IBs, CTAs, CPOs and LTMs. Several commenters, including a majority of the contract markets who commented on the proposal, objected to an update requirement as unnecessary and burdensome. Some of these commenters suggested that if the Commission decides to adopt an update requirement, it should use a three-year cycle, rather than require an update on an annual basis. The Commission has reviewed these comments and, upon reconsideration of the matter and in light of the existing requirement under Rule 3.31(b) that a floor broker promptly

¹⁰ Commission Rule 30.10 permits persons located outside the U.S., who are subject to a comparable regulatory framework in the jurisdiction in which they are situated, to seek an exemption from certain of the Commission's foreign futures and options rules (17 CFR Part 30 (1991)) based upon substituted compliance with comparable regulatory requirements of the foreign jurisdiction. The Commission has granted petitions under Rule 30.10 to nine foreign self-regulatory organizations and member firms they have designated.

¹¹ See Sections 8a(2)(H) and 8a(3)(N) of the Act.

correct any deficiency or inaccuracy in his registration application by filing a Form 3-R, has determined to require floor brokers to update registration by means of reviewing an NFA printout every two years. The final rules have been revised accordingly.

F. Rule 3.12(f)—Reporting of Dual and Multiple Associations

The Commission proposed to amend Rule 3.12(f) to codify the bases for permitting dual and multiple associations of APs. Such associations would require, among other things, that each sponsor of an AP with dual and multiple associations acknowledges to the NFA that it will be jointly and severally liable for the AP's activities with respect to any customers common to it and the other sponsor(s) of the AP. The Commission proposed to maintain a prohibition against dual registration where an associated person of an FCM or IB directs customers seeking a managed account to use the services of a CTA approved by the FCM or IB and where all such accounts are carried by the FCM or introduced by the IB, in which case the AP is deemed solely associated with the FCM or IB.

Four commenters addressed this issue. One commenter stated that it "applauds the Commission's efforts to eliminate the current prohibitions on multiple associations in Rule 3.12 and to require all sponsors to sign a certification accepting responsibility for the conduct of the AP with respect to all dual customers." Another commenter stated that it shared the goal of simplifying the registration process and approved of the Commission's proposal "to codify many of the exceptions to the existing regulatory structure that have become routine over the years." A third commenter "commends the Commission's efforts to streamline the process and supports the revisions regarding the multiple associations exemption."

The fourth commenter argued that the required acknowledgements could be interpreted as imposing liability upon each sponsoring firm for all acts of an AP in his capacity as an agent and even, potentially, for acts of other sponsoring firms. However, the proposed rules and the preamble thereto clearly stated that the sponsor would acknowledge joint and several liability for a dually registered AP only as to activities "with respect to any customers common to it and another sponsor of the AP."¹² There

has been extensive experience with this type of acknowledgment of liability under existing Rule 3.16(e)(2) for APs of CTAs and CPOs with dual or multiple associations and the Commission has found that the representations clarify the scope of sponsorship responsibility for dually sponsored individuals and that those affected by this requirement have not found it unduly burdensome. Accordingly, upon consideration of the comments, the Commission has determined to adopt the acknowledgment of joint and several liability under Rule 3.12(f) as proposed.

The first commenter suggested, in light of the required acknowledgment of joint and several liability by dual or multiple sponsors, that the Commission allow an AP of an FCM or IB also to register as an AP of a CTA where the AP directs managed account customers to a CTA approved by the FCM or IB. The purpose of the provision that in such cases the AP is deemed solely associated with the FCM or IB was to eliminate administrative burdens on firms due to frequent changes in CTAs on an FCM's or IB's approved list. Neither the latter provision nor the final rule prohibits AP activity, but addresses only the status in which the AP is deemed to be registered and therefore should not prevent any person from engaging in sales activity.

Consequently, the final Rule 3.12(f) is adopted as proposed, except for two technical changes. The language in Rule 3.12(f)(1) concerning common customers of more than one sponsor of the same AP refers to "customers" generically rather than including the additional specific references in the proposal to "option customers" and "leverage customers." The Commission believes the use of the generic term "customer" encompasses customers with respect to all types of commodity interests, whether futures, options or leverage contracts, and thus that the additional language in the proposal was superfluous. The Commission also has not included in the final paragraph (4) of Rule 3.12(f) the language "nor be required to file a Form 3-R." Since this provision describes the one instance where dual registration is unnecessary and prohibited, the Commission believes that any reference to Form 3-R is likewise superfluous.

G. Rule 3.12(h)(1)(iii)—Exemption From AP Registration for Corporate Officers or General Partners With No Direct Supervisory Responsibilities

The Commission has determined to clarify that its codification in Rule 3.12(h)(1)(iii) of an exemption from AP registration for corporate officers or general partners with no direct

supervisory responsibilities requires only that the firm involved engage in commodity interest related activity for customers as no more than ten percent of its total revenue on an annual basis. Accordingly, the amount of the firm's proprietary commodity interest business need not be included in this calculation. The phrase "for customers" was not included in the proposal, but the Commission believes it is appropriate to clarify this point since it is customer business that is the basis for any requirement to register as an AP.

H. Rule 3.12(j)—Special Temporary Licensing and Registration Procedures for Associated Persons of Futures Commission Merchants and Introducing Brokers Involved Only With Certain Commodity Interests

Rule 3.12(j) provides a procedure whereby persons limiting their AP activities to specified commodity interests would not be required to comply with the rules generally applicable to applicants for AP registration, including the proficiency testing requirements, but could instead comply with streamlined requirements adopted by NFA and approved by the Commission.

Although the commenters generally agreed with the goal of simplifying the registration process for those limiting their activities to specified commodity interests, certain commenters questioned whether the proposed rule would simplify registration or lead to unnecessarily cumbersome procedures. Certain commenters also suggested that NFA and the National Association of Securities Dealers (NASD) should cooperate in developing a uniform system for registration of all futures and securities salesmen, including a single examination for all such persons, in an effort to simplify registration, expand the available sales force in futures, and enhance the competitiveness of the futures markets.

The Commission has determined to adopt Rule 3.12(j) as proposed. The Commission, nonetheless, wishes to make clear that a contract market seeking special registration procedures with respect to persons limiting their activities to a particular new contract may consult with NFA and develop such procedures to be submitted in conjunction with the contract market designation application for simultaneous consideration by the Commission. The Commission also believes that the special registration procedures would be substantially identical for the various contracts qualifying for such procedures, despite the fact that NFA would have

¹² 56 FR 37026, at 37033.

discretion to vary these procedures on a contract-by-contract basis, subject to Commission approval. Accordingly, special registration procedures need not delay the consideration of a contract market designation application and such procedures could be in place when the new contract is available for trading. The Commission believes that the issue of a complete unification of NFA and NASD registration requirements, including those concerning proficiency testing, is beyond the scope of the present rulemaking.

I. Rule 3.21—Exemption From Fingerprinting Requirement for Outside Directors

The Commission's rules generally require all natural person principals of an applicant for registration to file fingerprint cards with NFA. Proposed Rule 3.21 would have authorized NFA to consider petitions for exemption from the fingerprint requirement filed by applicants or registrants on behalf of outside directors if such directors do not engage in commodity interest activities, do not have direct supervisory responsibility over persons so engaged, and do not have regular access to books and records relating to commodity interest activities.

One commenter suggested that in lieu of requiring a petition for exemption from the fingerprint requirement for outside directors, the Commission's regulations should mirror those of the SEC, whereby a securities broker-dealer is required to maintain and keep current a statement that provides information concerning specified restrictions upon the activities of the partner, director, officer or employee for whom exemption is claimed.¹⁵ The Commission has decided to adopt a final Rule 3.21(c) which requires a firm, in lieu of filing a petition for exemption, to file with NFA a "Notice of Exemption Pursuant to Rule 3.21(c)" on behalf of any outside director who qualifies for the fingerprint exemption based upon the restrictions set forth in Rule 3.21(c). Rule 3.21(d) requires the firm to file with NFA a Form 8-R on behalf of such outside director. Under these rules, NFA will have information about those outside directors claiming the exemption from the fingerprint requirement and will be able to monitor the individuals and

firms involved, but the exemption will be self-executing and a petition for exemption will not be required to be filed with or reviewed by NFA.¹⁴ However, as is provided under Rule 3.10(a)(2)(ii), in appropriate cases the Commission and NFA may require further information from the firm with respect to any outside director referred to in a Notice Pursuant to Rule 3.21(c).

J. Rule 3.32—Changes Requiring Re-Registration; Addition of Principals

Under current Rule 3.32, subject to various exceptions, reregistration is required when a person not listed on the registrant's initial application becomes a principal. The Division has issued exemptive relief from the re-registration requirement in cases where no new natural persons are added as principals and where, *inter alia*, the addition of non-natural principals is not being undertaken for the purpose, and will not have the effect, of limiting the registrant's liability. The Commission proposed to amend Rule 3.32(a)(2) to codify such relief by requiring, in the event of a reorganization where no new natural person principals of a registrant are added, only the filing of a Form 3-R and written certifications to the effect that: (A) The ultimate day-to-day control of the registrant remains the same, (B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and (C) the insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting liability of the registrant. In addition, the Commission proposed an exemption from the requirement of re-registration where a new director is added but the majority of the board of directors remains the same and the registrant, among other things, files a corporate resolution with the NFA prohibiting the new director from exercising any control or voting privileges over the registrant's commodity interest activities until the NFA has had the opportunity to complete its fitness inquiry.

Although offering general support, one commenter requested clarification of several issues. This commenter expressed concern as to the application

of the proposed rule to sole proprietorships or partnerships which have decided to incorporate since the effect of incorporation would be to limit the liability of the individual registrant. The Commission notes that a previous amendment to Rule 3.32 specifically deleted "changes in the form of organization of a registrant" as a grounds for reregistration.¹⁶ As such, representations regarding limitation of liability would be unnecessary in a situation involving only a change in the form of organization.

With respect to the proposed amendment relating to the addition of new directors, the commenter questioned the utility of a corporate resolution prohibiting the new director from exercising control or voting privileges in light of the fact that the majority of the directors will remain the same. The commenter viewed this requirement as "one which will add a new hurdle to the re-registration process which will undoubtedly delay the process without providing any additional regulatory benefit." The Commission, in adopting the rule amendments as proposed, emphasizes the short term effect of the bar imposed by the corporate resolution (which will expire when the fitness check is completed) and the fact that the resolution is limited in scope to the registrant's commodity interest activities. The Commission believes that, given these limitations, the required corporate resolution does not constitute an unwarranted regulatory burden in these circumstances.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect IBs, FCMs, APs, FBs, CTAs, CPOs and LTMs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.¹⁶ FCMs, registered CPOs and LTMs have been determined not to be small entities under the RFA. With respect to these registrant categories as well as the other registrant categories that may be affected by these rules, the Commission does not believe that the rules would have any increased regulatory impact as

¹⁵ The restrictions on activities parallel those in Rule 3.21(c) and provide that such person is not engaged in the sale of securities; does not regularly have access to the keeping, handling or processing of securities, monies, or the original books and records relating to the securities or the monies; and does not have direct supervisory responsibility over persons engaged in the activities referred to in this footnote. 17 CFR 240.17f-2(a)(1)(i) (1991).

¹⁴ The commenter also suggested that Commission Rules 3.10 and 3.32 be amended to conform to the concept of filing a notice rather than a petition for exemption under Rule 3.21(c). As Rule 3.10(a)(2)(i) already refers to "a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part," no change is necessary. The language of Rule 3.32 (c) and (h) has been changed to conform to Rule 3.10(a)(2)(i) in light of the change discussed above regarding Rule 3.21(c).

¹⁶ 53 FR 8428, 8429, 8433-34 (March 15, 1988).

¹⁶ 47 FR 18618-18621 (April 30, 1982).

the overall effect of the rules is to reduce regulatory burdens on all entities, including small businesses.

One comment was received with respect to FBs. This commenter maintained that amended Rule 3.11(d) would create an increased regulatory burden on FBs, contravening the purposes of the RFA. The Commission finds that in light of the existing requirement for FBs to update and maintain their registration information,¹⁷ Rule 3.11(d) supports such requirement by requiring review of NFA printouts of registration information. Therefore, FBs should not suffer a significant economic impact as a result of the required biennial review of registration information. As a consequence, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501-3512 (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed form and the associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules on April 10, 1991 and assigned OMB control number 3038-0024 to the rules. While these rules impose no additional overall burden, the group of rules of which these are a part have the following burden:

Average Burden of Hours per Response.....	1.20
Number of Respondents	180
Frequency of Response.....	3

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395-7340.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures.

17 CFR Part 3

Brokers, Registration.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2, 4d, 4e, 4f, 4k, 4m, 4n, 4p, 5a, 8a, 17 and 19 thereof (7 U.S.C. 2, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 7a, 12a, 21 and 23), hereby proposes to amend parts 1 and 3 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24, unless otherwise stated.

2. Section 1.10 is amended by revising paragraphs (j)(3) and (j)(4) to read as follows:

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

(j) * * *

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.10(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, 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 registration of the introducing broker is suspended, revoked, or withdrawn in accordance with the provisions of this chapter, the guarantee agreement shall expire as of the date of such suspension, revocation or withdrawal.

(ii) If the registration of the futures commission merchant is suspended or revoked, the guarantee agreement shall expire 30 days after such 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.

3. Section 1.57 is amended by revising paragraph (a)(1) to read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) * * *

(1) Open and carry each customer's and option customer's account with a carrying futures commission merchant on a fully-disclosed basis: *Provided, however,* That an introducing broker which has entered into a guarantee agreement with a futures commission merchant in accordance with the provisions of § 1.10(j) of this part must open and carry such customer's and option customer's account with such guarantor futures commission merchant on a fully-disclosed basis; and

4. Section 1.62 is revised to read as follows:

§ 1.62 Contract market requirement for floor broker registration.

(a) Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to Section 5a(12) of the Act and § 1.41 of this part and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered under the Act as a floor broker in accordance with Section 4f of the Act and § 3.11 of this chapter, and such registration has not been suspended (and the period of such suspension shall not have expired), nor been withdrawn nor revoked. Each contract market shall also adopt, maintain in effect, and enforce rules which have become effective pursuant to Section 5a(12) of the Act and § 1.41 of this part which require biennial updates of registration filings by floor brokers in accordance with § 3.11(d) of this chapter and provide for requests for withdrawal of floor broker registration using Form 7-W in accordance with § 3.33 of this chapter.

(b) Each contract market must notify the Commission of any facts regarding a floor broker or an applicant for registration as a floor broker who has been granted trading privileges at the contract market which are set forth as statutory disqualifications in Section 8a(2) of the Act within ten business days of the date upon which the contract market first knows of such facts. Notice to the Commission shall be sufficient if the contract market gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief

¹⁷ 17 CFR 3.31(b) (1991).

Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581).

PART 3—REGISTRATION

Subpart A—Registration

5. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a and 23 unless otherwise noted.

6. Section 3.1 is amended by revising paragraphs (a)(3), (b) and (c) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 3.1 Definitions.

(a) * * *

(3) Any person who has contributed ten percent or more of the capital: *Provided, however,* That if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or insurance company subject to regulation by any State, such bank, branch, agency or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(b) *Current.* As used in this subpart, a Form 8-R is current if, subsequent to the filing of that form and continuously thereafter, the registrant or principal has been either registered or affiliated with a registrant as a principal.

(c) *Sponsor.* Sponsor means the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of this part for the registration of an associated person of such sponsor.

(d) *Beneficial owner.* Any person who, without limitation, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership, or of avoiding making a contribution of ten percent or more of the capital, as part of a plan or scheme to evade being deemed a principal of an applicant or

registrant under paragraph (a) of this section shall be deemed for purposes of such paragraph to be the beneficial owner or the contributor of capital.

(e) *Foreign futures authority.* Foreign futures authority means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule or regulation as it relates to a futures or options matter.

(f) *Commodity interest.* Commodity interest means:

(1) Any contract for the purchase or sale of a commodity for future delivery regulated under the Act and rules promulgated thereunder; and

(2) Any contract, agreement or transaction subject to Commission regulation under sections 4c or 19 of the Act.

7. Section 3.10 is amended by revising the heading and paragraphs (a), (b) and (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.* (1) (i) Application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7-R, completed and filed with the National Futures Association in accordance with the instructions thereto.

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

(iii) Applicants for registration as a commodity pool operator must accompany their Form 7-R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7-R with a Form 2-FR in accordance with the provisions of § 31.13 of this chapter.

(2)(i) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1)(i) 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 Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. The provisions of paragraph (a)(2)(i) of this section do not apply to any principal who has a current Form 8-R on file with the Commission or the National Futures Association.

(ii) In the case of an applicant with a principal that is not a natural person, the applicant's Form 7-R must also be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is a non-natural person principal listed on the Form 7-R of the applicant, and must be accompanied by the fingerprints of such natural person on a fingerprint card provided by the National Futures Association for that purpose: *Provided, however,* That the provisions of paragraph (a)(2)(ii) of this section shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission, is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or the United States. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7-R must be accompanied by a Form 8-R and fingerprints for each natural person described in the preceding sentence of such non-natural persons. The provisions of paragraph (a)(2)(ii) of this section do not apply to any natural person who has a current Form 8-R on file with the Commission or the National Futures Association or who has had filed on his behalf a Form 8-R and a

fingerprint card pursuant to paragraph (a)(2)(i) of this section. However, if such natural person is a foreign national who is regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, has been granted relief under § 30.10 of this chapter, or is employed by or a principal of a firm which has been granted relief under § 30.10 of this chapter, the National Futures Association may waive the requirement to file a Form 8-R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the applicant with respect to any natural person or entities referred to in paragraph (a)(2)(ii) of this section.

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant in accordance with § 1.10(j) of this chapter will have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7-R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and

following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

8. Section 3.11 is amended by revising paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 3.11 Registration of floor brokers.

(b) *Duration of registration.* A person registered as a floor broker in accordance with paragraphs (a) or (c) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. In accordance with § 3.31(d) of this part, each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker, must notify the National Futures Association within twenty days after such person's trading privileges on such contract market have ceased.

(d) *Biennial filing.* Any person registered as a floor broker in accordance with paragraphs (a) or (c) of this section must file with the National Futures Association a Form 8-R, completed in accordance with the instructions thereto, biennially on a date specified by the National Futures Association. The failure to file the Form 8-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

9. Section 3.12 is amended by revising the heading and paragraphs (a), (b), (c) introductory text, (d)(1) introductory text, (d)(1)(iv), (d)(1)(v) and (d)(2), by removing paragraphs (d)(4) and (d)(5), by revising paragraphs (f) and (h), and by adding new paragraphs (i) and (j) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), (i), or (j) of this section or is exempt from such registration pursuant to paragraph (h) of this section.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), (i), or (j) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of his or his sponsor's registration. In accordance with § 3.31(c) of this part, each of the registrant's sponsors must file a notice with the National Futures Association on Form 8-T or on a Uniform Termination Notice for Securities Industry Registration reporting the termination of the association of the associated person within twenty days thereafter.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), (i), and (j) of this section, application for registration as an associated person in any capacity must be on Form 8-R, completed and filed in accordance with the instructions thereto.

(d) *Special temporary licensing and registration procedures for certain persons—(1) Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes

associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8-R, completed in accordance with the instructions thereto and accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B) of this part) that contains conditions identical to those agreed to by the previous sponsor, which includes written certifications stating:

(iv) Whether there is a pending adjudicatory proceeding under Sections 6(b), 6(c), 6c, 6d, 8a, or 9 of the Act or §§ 3.55 or 3.60 of this part 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 § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the sponsor has received a copy of the notice of the institution of a proceeding if the applicant or registrant 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; and

(2) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

(f) *Reporting of dual and multiple associations.* (1) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B) of this part) files with the National Futures Association a Form 3-R in accordance with the instructions thereto. The filing of such a Form 3-R shall contain a certification signed by each sponsor that each sponsor has verified that the associated person is

currently registered as an associated person in some 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 each sponsor's responsibility to supervise that associated person, each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

(i) Solicitation or acceptance of customers' orders,

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

(iii) Solicitation of a client's or prospective client's discretionary account,

(iv) Solicitation or acceptance of leverage customers' orders for leverage transactions, and

(v) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

(2) Upon receipt by the National Futures Association of a Form 3-R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

(3) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of paragraphs (f)(1) and (f)(2) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in accordance with the requirements of paragraphs (f)(1) and (f)(2) of this section.

(4) If a person is associated with a futures commission merchant or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant or

introducing broker and all such customers' accounts solicited or accepted by that associated person are carried by the futures commission merchant or introduced by the introducing broker with which the associated person is associated, such a person shall be deemed to be associated solely with the futures commission merchant or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, floor broker, or as an introducing broker;

(ii) 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; or

(iii) The chief operating officer, general partner or other person in the supervisory chain-of-command, provided the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity for customers as no more than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(1)(iii)(C) or (h)(1)(iii)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to:

(1) Solicit or accept customers' or leverage customers' orders,

(2) Solicit a client's or prospective client's discretionary account,

(3) Solicit funds, securities or property for a participation in a commodity pool, or

(4) Exercise any line supervisory authority over those persons so engaged;

(B) Such supervisory person has no authority with respect to hiring, firing or other personnel matters involving persons engaged in activities subject to regulation under the Act;

(C) Another person (or persons) designated therein, who is registered as an associated person(s) or who has applied for registration as an associated person(s) and is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, holds and exercises full and final supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm; and

(D) If the person (or persons) so designated in accordance with paragraph (h)(1)(iii)(C) of this section ceases to have the authority referred to therein, the firm will notify the National Futures Association within twenty days of such occurrence by means of a subsequent resolution which resolution must also include the name of another associated person (or persons) who has been vested with full supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm in the event that all of those previously designated in accordance with paragraph (h)(1)(iii)(C) of this section have been relieved of such authority. Subsequent changes in supervisory authority shall be reported in the same manner.

(2) A person is not required to register as an associated person of a commodity trading advisor if that person is:

(i) Registered as a commodity trading advisor, if that person is associated with a commodity trading advisor; or

(ii) Exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or is associated with a person who is so exempt from registration: *Provided*, That the provisions of paragraph (h)(2)(ii) of this section 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 which is:

(A) Not exempt from registration pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or

(B) Registered as a commodity trading advisor notwithstanding the availability of that exemption.

(3) A person is not required to register as an associated person of a commodity pool operator if that person is:

(i) Registered as a commodity pool operator, if that person is associated with a commodity pool operator;

(ii) 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 paragraph (h)(3)(ii) of this section 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 which is

(A) Not exempt from registration pursuant to the provisions of § 4.13 of this chapter or

(B) Registered as a commodity pool operator notwithstanding the availability of that exemption; or

(iii) Where a commodity pool is operated or to be operated by two or more commodity pool operators, registered as an associated person of one of the pool operators of the commodity pool in accordance with the provisions of paragraphs (c), (d), (f), or (i) 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.

(i) *Special registration or temporary licensing procedures when previous sponsor's registration ceases.* (1) Any person whose registration as an associated person in any capacity was not subject to conditions or restrictions, and was terminated within the preceding sixty days because the previous sponsor's registration was revoked or withdrawn, and who becomes associated with a new sponsor, will be registered as an associated person of such new sponsor upon the mailing by that new sponsor 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;

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

(iv) Whether there is a pending adjudicatory proceeding under sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 of this part 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 § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified, in accordance with paragraph (i)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph;

(vi) That the Disciplinary History of such person's registration application contains no "Yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(vii) That the new sponsor will be responsible for supervising all activities of the person in connection with the sponsor's business as a registrant under the Act.

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

(2) The certifications required by paragraphs (i)(1)(i), (i)(1)(v), and (i)(1)(vii) of this section must be signed

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

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

(j) *Special temporary licensing and registration procedures for associated persons of futures commission merchants and introducing brokers involved only with certain commodity interests.* Notwithstanding any other provision of law, any person associated with a futures commission merchant or an introducing broker may be granted a temporary license or registration to act in the capacity of an associated person of such sponsor if such person restricts his activities only to those commodity interests listed in Appendix B to this part and if such person and his sponsor comply with any special temporary licensing or registration procedures applicable to persons involved solely with such commodity interests that have been adopted by the National Futures Association and approved by the Commission.

* * * * *

§§ 3.13 through 3.18 and 3.20 [Removed]

10. Sections 3.13 through 3.18 and § 3.20 are removed and reserved.

11. Section 3.21 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not

also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2)(i), 3.32(a)(3)(i), 3.32(c) and 3.32(h) of this part, file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) Is not engaged in:

- (i) the solicitation or acceptance of customers' orders,
- (ii) the solicitation of funds, securities or property for a participation in a commodity pool,
- (iii) the solicitation of a client's or prospective client's discretionary account,

(iv) the solicitation or acceptance of leverage customers' orders for leverage transactions;

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

- (i) Commodity interest transactions;
- (ii) Customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or
- (iii) The original books and records relating to the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

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

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

- (i) The name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;
- (ii) The nature of the duties of the outside director for whom exemption under paragraph (c) of this section is sought;
- (iii) The internal controls used to ensure that the outside director for whom exemption under paragraph (c) of this section is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section; and

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

(d) A firm that has filed a Notice Pursuant to Rule 3.21(c) with respect to an outside director described therein must file with the National Futures

Association on behalf of such outside director a Form 8-R, completed in accordance with the instructions thereto and executed by the outside director. The exemption provided for in paragraph (c) of this section is limited solely to the outside director's fingerprint requirement and does not affect any other duties or responsibilities of the firm or the outside director under the Act or the rules set forth in this chapter. In appropriate cases, the Commission and the National Futures Association may require further information from the firm with respect to any outside director referred to in a Notice Pursuant to Rule 3.21(c).

12. Section 3.22 is amended by revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Division of Trading and Markets or Division of Enforcement or either Director's designee, or the National Futures Association may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a) (1) That derogatory information has come to the attention of the staff of the Commission or the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice and requesting the person to provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation, or

(2) That the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and

* * * * *

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the person is unfit to become or to remain so registered.

* * * * *

13. Section 3.30 is revised to read as follows:

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

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

(b) Each registrant, while registered and for two years after termination of registration, and each principal, while affiliated and for two years after termination of affiliation, must notify in writing the National Futures Association of any change of the address on the application for registration, biographical supplement, or other address filed with the National Futures Association for the purpose of receiving communications from the Commission or the National Futures Association. Failure to file a required response to any communication sent to the latest such address filed with the National Futures Association which is caused by a failure to notify in writing the National Futures Association of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any National Futures Association or Commission proceeding, including a reparation proceeding brought under part 12 of this chapter.

14. Section 3.32 is amended by revising paragraphs (a), (c), (e), (g), and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a)(1) Except as otherwise provided in this section, if the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, registration is deemed to terminate and a new registration is required whenever a person not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration):

(i) Becomes the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or acquires the right to vote ten percent or more of the corporate registrant's voting securities;

(ii) Becomes entitled to receive ten percent or more of the registrant's profits;

(iii) Contributes ten percent or more of the capital: *Provided, however, That* if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or insurance company regulated by any State, the termination of registration shall be deemed not to have occurred and the re-registration requirement shall not apply, provided such debt is not guaranteed by another party not listed as a principal;

(iv) Becomes a director of the corporate registrant;

(v) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;

(vi) Acquires ownership of the registrant's business in the case of a sole proprietorship; or

(vii) Becomes a general partner of the registrant in the case of a partnership.

(2)(i) If the person who becomes a principal of the registrant because of an event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section is a non-natural person and each natural person who would be deemed a principal, under the definition set forth in § 3.1(a) of this part, of the entity that is a non-natural person has a current Form 8-R on file with the Commission or the National Futures Association, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed: *Provided, however, That* within twenty days of the

occurrence of the event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section, the registrant must notify the National Futures Association of the name of such added principal on Form 3-R and must file written certifications with the National Futures Association stating:

(A) the ultimate day-to-day control of the registrant remains the same,

(B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and

(C) the insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

(ii) If the principals of the new non-natural person principal of the registrant are also non-natural person principals, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed only if the registrant files a Form 8-R and fingerprints for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of such latter non-natural persons: *Provided, however, That* the provisions of paragraph (a)(2)(ii) of this section shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission, is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or by the United States. The provisions of paragraph (a)(2)(ii) of this section do not apply to any natural person who has a current Form 8-R on file with the Commission or the National Futures Association. However, if such natural person is a foreign national who is regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, has been granted relief under § 30.10 of this chapter, or is employed by or a principal of a firm which has been granted relief under § 30.10 of this chapter, the National Futures Association may waive the requirement to file a Form 8-R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the registrant with

respect to any natural persons or entities referred to in paragraph (a)(2)(ii) of this section.

(3) If a registrant adds a new director, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed pursuant to paragraph (a)(1)(iv) of this section if a majority of the board of directors remains the same and the registrant, within twenty days after the election of the director, files with the National Futures Association:

(i) A Form 8-R, completed in accordance with the instructions thereto and executed by the new director, accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose (unless such director qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part), unless the new director has a current Form 8-R on file with the National Futures Association or the Commission;

(ii) A Form 3-R amending the registrant's Form 7-R to identify the new director and, if such new director has a current Form 8-R on file with the National Futures Association or the Commission, a statement to that effect; and

(iii) A corporate resolution prohibiting the new director from exercising any authority or voting privilege as a director with respect to the conduct of the registrant's commodity interest related business until the National Futures Association has completed its fitness inquiry and has determined that the new director is not unfit to act as a principal of the registrant.

(c) Notwithstanding any other provision of this part, each Form 7-R filed in accordance with paragraph (b) 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 registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8-R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part.

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as

described in paragraph (a)(1)(v) of this section, a new registration will not be required if the registrant submits a written notice on Form 3-R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8-R, completed in accordance with the instructions thereto and executed by the registrant's new chief executive officer or person occupying a position of similar status or performing a similar function. The Form 8-R for such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who has a current Form 8-R on file with the National Futures Association or the Commission.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become so affiliated with such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

(g) Notwithstanding the provisions of § 3.12(a), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant for registration subsequent to the filing of a Form 7-R in accordance with the requirements set forth in § 3.10(a) of this part, the applicant for registration must file a Form 8-R with the National Futures Association. 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 for that purpose by the National Futures Association, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. This filing need not be made for any such principal who has a current Form 8-R on

file with the National Futures Association or the Commission: *Provided,* That within twenty days the applicant for registration must notify the National Futures Association of the name of such added principal on Form 3-R.

15. Section 3.33 is amended by revising paragraphs (a) introductory text, (e) and (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker may request that its registration be withdrawn in accordance with the requirements of this section if:

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under § 3.10(d) or § 3.11(d) of this part to treat the failure by a registrant to file an annual Form 7-R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d) or 3.11(d) of this part, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

Subpart B—Temporary Licenses

16. The authority for Subpart B continues to read as follows:

Authority: 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, 21, and 23; 5 U.S.C. 552 and 552b.

17. Section 3.40 is amended by revising paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

(c) The sponsor's certification required by § 3.12(c) of this part.

18. Section 3.42 is amended by revising paragraph (a) to read as follows:

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission or the National Futures Association pursuant to § 3.60 of this part that the applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in § 3.40(c) of this part;

(3) Immediately upon the withdrawal of the registration application pursuant to § 3.40(d);

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under Sections 6(d) or 6b of the Act;

(5) Immediately upon failure to pay the full amount of a reparation order within the time permitted under Section 14(f) of the Act; or

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to Part 180 of this chapter within the time permitted for such compliance as specified in Section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum.

19. Section 3.44 is amended by revising paragraphs (a)(3) and (a)(5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) ***

(3) A Form 8-R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, the Disciplinary History portion

of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under Sections 8a(2) through 8a(4) of the Act, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided*, That a principal who has a current Form 8-R on file with the National Futures Association or the Commission is not required to submit a fingerprint card if the principal is not otherwise required to be registered as an associated person of the applicant.

Subpart C—Denial, Suspension or Revocation of Registration

20. The authority citation for subpart C continues to read as follows:

Authority: 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, 21 and 23; 5 U.S.C. 552 and 552b.

21. Section 3.50 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 3.50 Service.

(a) For purposes of this subpart, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing. Where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three days.

(b) ***

(1) Any registrant sponsoring the applicant or registrant pursuant to the provisions of § 3.12 of this part if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

22. Section 3.51 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial

registration in any capacity under the Act may be found subject to a statutory disqualification under Sections 8a(2) or 8a(3) of the Act, the Commission may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Secretary of the Commission on or before twenty days after the date the notice described in paragraph (a) of this section is served.

§§ 3.52 through 3.54 [Removed]

23. Sections 3.52 through 3.54 are removed and reserved.

24. Section 3.55 is amended by revising paragraphs (a) introductory text, (a)(3), (b), (e), and (f) and by removing paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 3.55 Suspension and revocation of registration pursuant to Section 8a(2) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a registrant in any capacity under the Act that:

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant may be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written submission.* If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in § 3.60(b)(1) of this part. Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant.

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not

be revoked. The registration of the registrant shall be suspended, effective five days after the order to show cause is served upon the registrant in accordance with § 3.50(a) of this part, until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the registrant is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however, That* in no event shall the registrant be suspended for a period to exceed six months.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Hearing Clerk shall promptly serve a copy of such order on the registrant, the Division of Trading and Markets and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) of this part unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

(f) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (e)(1) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b)-(j) of this part.

§ 3.56 [Removed]

25. Section 3.56 is removed and reserved.

26. Section 3.60 is revised to read as follows:

§ 3.60 Procedure to Deny, Condition, Suspend, Revoke or Place Restrictions Upon Registration Pursuant to Sections 8a(2), 8a(3) and 8a(4) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time give written notice to any applicant for registration or any registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act;

(2) The allegations set forth in the notice, if true, constitute a basis upon

which registration may be denied, granted upon conditions, suspended, revoked or restricted;

(3) The applicant or registrant is entitled to file a response within thirty days of the date of service of the notice to challenge the evidentiary basis of the statutory disqualification set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted, or granted upon condition, or should not be conditioned, suspended, revoked or restricted; and

(4) If the applicant or registrant does not file a timely response to the notice:

(i) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true and conclusive for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act; and

(ii) A presiding officer may thereafter decide whether to issue an order of default in accordance with paragraph (g) of this section to deny, condition, suspend, revoke, or place restrictions upon registration based solely upon the facts set forth in the notice.

(b) *Response.* Within thirty days after service upon the applicant or registrant of a notice issued in accordance with the provisions of paragraph (a) of this section, the applicant or registrant shall file a response with the Hearing Clerk and serve a copy of the response on the Division of Enforcement.

(1) In the response, the applicant or registrant shall state whether he challenges the evidentiary basis of the statutory disqualification set forth in the notice. The grounds for such a challenge shall include evidence as to:

(i) The applicant's or registrant's identity,

(ii) The existence of a clerical error in any record documenting the statutory disqualification,

(iii) The nature or date of the statutory disqualification,

(iv) The post-conviction modification of any record of conviction, or

(v) The favorable disposition of any appeal. The applicant or registrant shall state the nature of each challenge and submit a verified statement or affidavit to support facts material to each challenge raised in the response.

(2)(i) In the response, if the person is not an associated person or a floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that registration would not pose a substantial risk to the public despite the existence of the

disqualification set forth in the notice. If the person is an associated person or floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the applicant or registrant is an associated person or floor broker or an applicant for registration in either capacity and intends to make such a showing, he must also submit a letter signed by an officer or general partner authorized to bind the sponsor or, in the case of a floor broker or applicant for registration as a floor broker, another floor broker, whereby the sponsor or floor broker agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section: *Provided, That*, with respect to such sponsor or supervising floor broker:

(A) An adjudicatory proceeding pursuant to the provisions of sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act is not pending; and

(B) In the case of a sponsor which is a futures commission merchant or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of §§ 1.12(b) or 31.7(b) of this chapter, respectively; and

(C) In the case of a supervising floor broker, such supervising floor broker is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) If, in the response, the applicant or registrant states that he intends to make the showing referred to in paragraph (b)(2)(i) of this section, he shall also, within fifteen days after filing his initial response under paragraph (b) of this section, file with the Hearing Clerk and serve a copy on the Division of Enforcement a submission which includes a statement of the applicant, registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing, and copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. The factors forming the basis for a disqualified applicant's or registrant's showing referred to in

paragraph (b)(2)(i) of this section may include:

(A) Evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice;

(B) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(C) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

(c) *Reply.* Within thirty days after the latter of the date the applicant or registrant serves a copy of the response on the Division of Enforcement (if no further submission is to be made in accordance with paragraph (b)(2)(ii) of this section), or the date the applicant or registrant serves a copy of the further submission made in accordance with paragraph (b)(2)(ii) of this section on the Division of Enforcement, the Division of Enforcement shall file a reply thereto with the Hearing Clerk and serve a copy of the reply on the applicant or registrant. The Division of Enforcement's reply shall include either:

(1) A motion for summary disposition stating that there are no genuine issues of material fact to be determined and that registration should be denied or revoked, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the reply and would be admissible under § 10.91 of this chapter; or

(2) A description of factual issues raised in the applicant's or registrant's response and further submission, if any, that the Division of Enforcement regards as material and disputed. Such a reply shall also include the identity and a summary of the expected testimony of each witness whom the Division intends to have testify, and copies of all documents which the Division intends to introduce.

(d) *Oral Presentation.* Within thirty days of the date the Division of Enforcement files its reply in accordance with the provisions of paragraph (c) of this section to the applicant's or registrant's response and further submission, if any, the

Administrative Law Judge shall issue an order:

(1) If the Administrative Law Judge finds, based on the motion for summary disposition, that a party is entitled to judgment as a matter of law, granting, denying, suspending, or revoking the registration of an applicant or registrant, or dismissing the notice issued in accordance with paragraph (a) of this section, and such order shall be made in accordance with the standards set forth in paragraphs (e) and (f) of this section; or

(2) Notifying the parties of a time and place of hearing. At such hearing, the parties shall be limited to presentation of witnesses and documents listed in previous filings except, for good cause shown, the parties may request that the witness and document lists be supplemented for purposes of rebuttal. Such oral hearing shall be conducted in accordance with §§ 10.61–10.81 and 10.83 of this chapter. The Administrative Law Judge shall file an initial decision after completion of the oral hearing in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(3) Upon notice that the Administrative Law Judge has concluded that an oral presentation is appropriate, the parties may elect to participate by telephone in accordance with the terms set forth in § 12.209(b) of this chapter. To effect such an election, the party shall file a notice with the Hearing Clerk and serve a copy on all opposing parties within fifteen days of the date the Administrative Law Judge's notice is served. The filing of an election to participate by telephone will be deemed a waiver of the party's right to a full oral hearing on the parties' material disputes of fact. The Administrative Law Judge shall schedule a telephonic hearing only if all parties to the proceeding elect such a procedure. The Administrative Law Judge shall conduct such a hearing in accordance with § 12.209(b) of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(e) *Determination by Administrative Law Judge—Standards of Proof.* The Administrative Law Judge's written determination shall specifically consider whether the Division of Enforcement has shown by a preponderance of the evidence that the applicant or registrant is subject to the statutory disqualification set forth in the notice issued by the Commission and, where appropriate:

(1) In actions involving statutory disqualifications set forth in section 8a(2) of the Act, whether the applicant

or registrant has made a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification; or

(2) In actions involving statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification.

(f) *Determination of Administrative Law Judge—Findings.* In making his written determination, the Administrative Law Judge shall set forth the facts material to his conclusion and provide an explanation of his decision in light of the statutory disqualification set forth in the notice and, where appropriate, his findings regarding:

(1) Evidence mitigating the seriousness of the wrongdoing underlying the applicant's or registrant's statutory disqualification;

(2) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(3) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his sponsor or supervisory floor broker may petition to lift or modify the conditions or restrictions in accordance with § 3.64 of this part.

(g) *Default.* The procedures for obtaining a default order and the setting aside of a default order in a proceeding instituted under this section shall follow the procedures set forth in §§ 10.93 and 10.94 of this chapter.

(h) *Settlements.* (1) When offers may be made. Parties may, at any time during the course of the proceeding, propose offers of settlement. All offers of settlement shall be in writing.

(2) *Content of offer.* Each offer of settlement made by a respondent shall:

(i) Acknowledge service of the notice;

(ii) Admit the jurisdiction of the Commission with respect to the matters set forth in the notice;

(iii) Include a waiver of:

(A) A hearing,

(B) All post-hearing procedures,

(C) Judicial review, and

(D) Any objection to the staff's participation in the Commission's consideration of the offer;

(iv) Stipulate the record basis on which an order may be entered, which may consist solely of the notice and any findings contained in the offer of settlement; and

(v) Consent to the entry of an order reflecting the terms of settlement agreed upon, including, where appropriate:

(A) Findings that the respondent is subject to statutory disqualification under sections 8a(2), 8a(3), or 8a(4) of the Act, and

(B) The revocation, suspension, denial or granting of full registration or imposition of conditioned or restricted registration.

(3) *Submission of offer.* Offers of settlement made by a respondent shall be submitted in writing to the Division of Enforcement, which shall present them to the Commission with the Division's recommendation. The respondent will be informed if the recommendation will be unfavorable, in which event the offer shall not be presented to the Commission unless the respondent so requests. Any offer of settlement not presented to the Commission shall be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(4) *Acceptance of offer.* The offer of settlement will only be deemed accepted upon issuance by the Commission of an opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Hearing Clerk.

(5) *Rejection of offer.* When an offer of settlement is rejected, the party making the offer shall be notified by the Division of Enforcement and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding; and the offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any

manner in the proceeding by any party thereto.

(i) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the parties unless:

(1) One or more of the parties files and serves a timely notice of appeal in accordance with § 10.102 of this chapter; or

(2) The Commission issues an order staying the effective date of the determination and notifying the parties of its intention to undertake sua sponte review in accordance with § 10.105 of this chapter.

(j) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

(k) With the exception of §§ 10.2 through 10.5, 10.7 through 10.12(a) (1), 10.12(a) (3) through 10.12(g), 10.26(a)-(d), 10.34, 10.43, 10.44 and 10.84 of this chapter, or unless otherwise provided in §§ 3.50 through 3.64 of this part, the provisions of the Commission's Rules of Practice in part 10 of this chapter shall not apply in any proceeding brought under this part to deny, suspend, revoke, restrict or condition registration pursuant to sections 8a(2), 8a(3) or 8a(4) of the Commodity Exchange Act.

27. Section 3.61 is revised to read as follows:

§ 3.61 Extensions of time for proceedings brought under § 3.55 and § 3.60 of this part.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission or an Administrative Law Judge before whom a proceeding brought under § 3.55 or § 3.60 of this part is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by those rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or the Administrative Law Judge may set a time limit for that action.

(b) *Motions for extension of time.* Absent extraordinary circumstances, in any instance in which a time limit that has been prescribed for an action to be taken concerning any matter exceeds seven days from the date of the order establishing the time limit, requests for extension of time shall be filed at least five (5) days prior to the expiration of

the time limit and shall explain why an extension of time is necessary.

§ 3.62 [Removed]

28. Section 3.62 is removed and reserved.

29. Section 3.63 is revised to read as follows:

§ 3.63 Service of order issued by an Administrative Law Judge or the Commission.

A copy of any order issued pursuant to § 3.60 of this part shall be served promptly upon the applicant or registrant, the Division of Trading and Markets, the Division of Enforcement, the National Futures Association, and any contract markets where the applicant or registrant is a member or has trading privileges in accordance with the provisions of § 3.50(a) of this part.

30. Section 3.64 is added to read as follows:

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) *Petition.* The registrant and his sponsor or supervising floor broker may file a petition with the Hearing Clerk and serve a copy of the petition on the Division of Enforcement to lift or modify conditions or restrictions on the registrant's registration.

(1) The petition may be filed after the period specified in the order imposing the conditioned or restricted registration.

(2) In the petition, the registrant and his sponsor or supervising floor broker shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. A sponsor's or supervising floor broker's affidavit must be sworn to by a person with actual knowledge of registrant's activities on behalf of the sponsor or supervising floor broker.

(b) *Response.* (1) Within thirty days of receipt of the petition, pursuant to paragraph (a) of this section, the Division of Enforcement shall file a response with the Hearing Clerk. The response must include a recommendation by the Division of Enforcement as to whether to continue the conditions or restrictions, modify the conditions or restrictions, or to allow for a full registration.

(2) If the Division of Enforcement agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Commission. Such recommendation will only be deemed accepted upon issuance by the Commission of an order lifting or

modifying conditions or restrictions on the petitioner's registration. Such order shall be so noted on the docket by the Hearing Clerk.

(c) *Oral Presentation.* If the Division of Enforcement requests a continuation, or a modification other than in accordance with the terms of the petition, of the restrictions or conditions on the registration, the Administrative Law Judge shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this section, determine whether an oral presentation is appropriate to the reliable resolution of the registrant's petition.

(1) If the Administrative Law Judge determines that an oral presentation is appropriate, he shall notify the parties of his determination and shall schedule and conduct an oral hearing in accordance with §§ 10.61 through 10.81 of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision or an order.

(2) If the Administrative Law Judge concludes that an oral presentation is unnecessary, he shall notify the parties and issue a written decision or an order.

(d) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the registrant, the registrant's sponsor or supervising floor broker and the Division of Enforcement unless one or more of the parties files a timely notice of appeal in accordance with § 10.102 of this chapter.

(e) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

Subpart D—Notice Under Section 4k(5) of the Act

31. The authority citation for subpart D continues to read as follows:

Authority: 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, 21, and 23; 5 U.S.C. 552 and 552b.

32. Section 3.70 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the

provisions of § 3.12 of this part or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the registrant first knows or should have known such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581).

(c) *Proceedings under Subpart C.*

Upon notification to the Commission by the registrant under paragraph (a) of this section, the Commission may promptly issue notice under §§ 3.55 or 3.60 of this part, as appropriate, to suspend and revoke the registration of the associated person of the registrant or to deny the registration of the applicant for registration as an associated person of the registrant.

Subpart E—Delegation and Reservation of Authority

33. The authority citation for subpart E continues to read as follows:

Authority: 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, 21, and 23; 5 U.S.C. 552 and 552b.

34. Section 3.75 is amended by revising paragraph (c) to read as follows:

§ 3.75 Delegation and reservation of authority.

(c) The Commission reserves to itself the decision in any case to proceed by order, upon notice and hearing, to deny, suspend, condition or restrict the registration of any person pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

Issued in Washington, DC on May 26, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-12661 Filed 6-1-92; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AD24

Federal Old-Age, Survivors, and Disability Insurance Benefits, Consolidation of Old Methods of Computing Primary Insurance Amounts

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules amend our regulations concerning the methods used to compute the primary insurance amounts of certain workers to reflect sections 5117 (a), (b), and (c) of Public Law (Pub. L.) 101-508, the Omnibus Budget Reconciliation Act of 1990, enacted November 5, 1990. Section 5117 consolidates and eliminates complex and little-used computation methods and will simplify the computation of the primary insurance amounts of certain workers. No benefits paid to individuals already receiving benefits will be revised as a result of this provision.

EFFECTIVE DATE: These rules are effective on June 2, 1992. However, they will not affect any benefits payable for months prior to June 1992.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1769.

SUPPLEMENTARY INFORMATION:

Background

The primary insurance amount is the figure we use in calculating the amount of monthly cash benefits actually payable to an insured worker and his or her dependents and survivors. The primary insurance amount is computed under several methods contained in the Social Security Act (the Act). Factors considered in determining the appropriate computation method include the worker's age, amount of earnings covered by the Act, date of death of the worker, and whether a period of disability was ever established for the worker. Generally, when more than one computation may be used, the computation yielding the highest primary insurance amount will be used.

Section 5117(a) of Public Law 101-508 amends section 215 of the Act. Section 5117(a) simplifies benefit computations by consolidating the methods used to