current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

AWP AZ CZ Yuma, AZ [Revised]

Yuma MCAS/Yuma International Airport, AZ
(lat. 32°39′23″ N, long. 114°36′22″ W)
Somerton Airport, AZ
(lat. 32°36′03″ N, long. 114°39′57″ W)
Bard VORTAC, AZ lat. 32°46′05″ N, long. 114°36′10″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Yuma MCAS/Yuma International Airport and within 1.8 miles either side of the Bard VORTAC 181 degree radial extending from the Bard VORTAC to the 5.2-mile radius of the Yuma MCAS/Yuma International Airport and within 1.8 miles either side of the 044 degree bearing from the Yuma MCAS/Yuma International Airport extending from the 5.2-mile radius to 6 miles northeast of the Yuma MCAS/Yuma International Airport excluding that airspace from the surface up to and including 300 feet AGL within 1 mile of the Somerton Airport west of a line one-quarter mile northeast of and parallel to the Somerton Airport northwest-southeast runway.

* * * * *

Issued in Washington, DC, on April 7, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–8839 Filed 4–14–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ACE–04]

Revocation of Control Zone; Davenport, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the control zone for the Davenport Municipal Airport, Davenport, Iowa. This action is necessary because the weather observation reporting requirements justifying the designation of the control zone are not being met.

EFFECTIVE DATE: 0901 UTC, May 27, 1993.

FOR FURTHER INFORMATION: Dale Carnine, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations to revoke the control zone at Davenport, Iowa (58 FR 4946). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Control zones are published in Section 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 17, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be removed subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the control zone at Davenport, Iowa. One of the requirements for the designation of a control zone is weather observation and reporting. As of September 1, 1992, weather observations were no longer taken at the Davenport Municipal Airport. Consequently, the FAA proposed to revoke the Davenport Iowa control zone. After the installation of a fully operational automated weather observing system, steps will be taken to redesignate a control zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zone

* * * * *

ACE IA CZ Davenport, Iowa [Removed]

* * * * *

Issued in Kansas City, Missouri.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 93–8840 Filed 4–14–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–AEA–09]

Revocation of Transition Area; Manahawkin, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the 700 foot Transition Area established at Manahawkin, NJ, due to the closure of the Manahawkin Airport, Manahawkin, NJ, and the cancellation of all associated instrument approach procedures (IAP) to this airport.

EFFECTIVE DATE: 0901 U.T.C. May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA–530, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

History

On November 17, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area at Manahawkin, NJ, due to the closure of the Manahawkin Airport, Manahawkin, NJ, and the cancellation of all associated IAPs to this airport (57 FR 58165). The proposed action would reduce the amount of controlled airspace in the area by raising the floor of controlled airspace from 700 feet to 1,200 feet above ground level in the vicinity.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Transition Areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Transition Area listed in this document will be removed subsequently from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot Transition Area established at Manahawkin, NJ, due to the closure of the Manahawkin Airport, Manahawkin, NJ, and the cancellation of all associated IAPs to this airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Transition Areas

* * * * *

AEA NJ TA Manahawkin, NJ [Removed]

* * * * *

Issued in Jamaica, New York, on March 30, 1993.

David Sprague,

Acting Manager, Air Traffic Division.

[FR Doc. 93–8841 Filed 4–14–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 10 and 145

Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Futures Trading Practices Act of 1992 (1992 Act), Public Law No. 102–546, 106 Stat. 3590, amended the Commodity Exchange Act (CEAct or Act) in several respects, including imposition of requirements for registration of floor traders (FTs) and ethics training for registrants. The 1992 Act also included authority to permit the suspension or modification of the registration of a registrant charged with a felony. The Commission proposed amendments to its rules to implement these requirements and this authority and provided a thirty-day period for public comment on these proposals. 58 FR 6748 (Feb. 2, 1993).

The Commission has carefully considered the comments received on its proposals 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) There will be one rather than two no-action positions available to FTs and any person with trading privileges as of April 26, 1993 who complies with certain conditions set forth in new Rule 1.66 will be eligible for such relief; (2) if an FT or floor broker (FB) loses trading privileges for other than disciplinary reasons, he may resume acting as an FT or FB, respectively, if trading privileges are restored by the same contract market within 60 days; (3) an FB who changes exchange memberships and uses special registration procedures will be eligible for a temporary license to act as an FB; and (4) ethics training programs other than those conducted or sponsored by a contract market for contract market members or an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics must be approved by the Commission.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading

Commission, 2033 K Street NW., Washington, DC 20581 Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

Historically, the CEAct required registration of FBs but not of FTs. In passing the 1992 Act, however, it was noted that "[t]he central goal of requiring registration of floor traders is to assure that these individuals are subject to the same background fitness checks as other Commission registrants and to allow the Commission to act with respect to the person's registration in appropriate cases." [1] Section 207 of the 1992 Act amended section 4e of the CEAct (7 U.S.C. 6e (1988)) to require registration of FTs and that the Commission issue rules necessary to implement that requirement no later than 180 days after the date of enactment of the 1992 Act (which will be April 26, 1993). Accordingly, the Commission proposed to incorporate FTs within the existing framework of registration rules applicable to other categories of registrant so that, among other things, proper evaluation of their backgrounds could be conducted. 58 FR 6748.

The Commission's proposals included a rule that would provide temporary "no-action" relief so that existing FTs who meet the criteria for registration could be registered without unnecessarily disrupting their ongoing business. However, the Commission further proposed that any person seeking to act as an FT who is not granted trading privileges by a contract market until after the effective date of final rules would be treated like any other applicant for registration and would have to be granted registration or a TL before commencing such activity. The Commission also proposed to permit TLs for FBs to act as FTs and to adopt several technical changes to its registration rules.

Section 210 of the 1992 Act added a new paragraph (b) to section 4p of the CEAct mandating ethics training for registrants, stating that such training shall be conducted within six months of registration for a new registrant and otherwise periodically. The rules to implement the ethics training requirement are subject to the same statutory deadline as the FT registration rules, i.e., April 26, 1993. The Commission proposed that periodic training be conducted every three years and provided for a wide range of providers of such training. The Commission also proposed a new rule to implement authority granted by section 227 of the 1992 Act for the suspension or modification of the registration of a registrant charged with a felony.

The Commission received 13 written comments in response to the proposed rulemaking. The commenters included seven contract markets (Chicago Board of Trade, Chicago Mercantile Exchange (two letters), Coffee, Sugar & Cocoa Exchange, Inc. (two letters), MidAmerica Commodity Exchange, Minneapolis Grain Exchange, New York Cotton Exchange, and New York Mercantile Exchange), two trade associations, a research/management consulting firm and the National Futures Association (NFA). 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 reconsideration of the proposals, is now adopting rules which it believes are responsive to the concerns raised by commenters and the regulatory objectives of this rulemaking proceeding.

II. Registration of Floor Traders

A. Scope of Registration Requirement

An FT is defined as "any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market." The definition of FB is similar except that an FB executes purchases or sale orders for any other person rather than solely for his own account. See Section 404(a) of the 1992 Act, to be codified at section 1a(9) and (8) of the CEAct, respectively (7 U.S.C. 2). The Commission's definitions of FB and FT parallel these statutory definitions, and in addition include any person required to register as an FB or FT under the Act by virtue of part 33 of the Commission's rules, which would cover an FB or FT who only engages in domestic exchange-traded commodity option transactions. See 17 CFR 1.3(n) (1992) (definition of FB) and the amendment to 17 CFR 1.3(x) set forth below (definition of FT). The definition of FT includes any person who executes or is authorized to execute futures or commodity option transactions on an exchange floor or trading system, without regard to whether such person owns an exchange membership or the limited nature of such person's trading privileges and, therefore, lessees or holders of membership rights that carry trading privileges must register as FTs.

The Commission noted in its proposals that a person who trades solely for his own account via computer terminal through the Chicago Mercantile Exchange/Chicago Board of Trade GLOBEX system, the New York Mercantile Exchange (NYMEX) ACCESS program or any other electronic trading mechanism of a contract market would be required to register as an FT under section 4e of the CEAct. 58 FR 6748, 6749. Certain commenters questioned whether persons using an electronic trading system should be considered FTs or suggested deferring this issue for reconsideration at a later date.[2]

Although the Commission recognizes that, as discussed in the proposing release, certain persons trading through electronic systems come within the FT definition, the scope of the registration requirement in the context of an electronic trading system may be affected by differences between electronic and exchange floor trading environments.

The Commission further recognizes that the immediate impetus for the FT registration requirement was from conduct occurring on the trading floor of an exchange and that registration of persons trading on the floor is of the most immediate regulatory concern, given the short time frame in which FT registration must be implemented. Accordingly, in light of the issues referred to above and the impending statutory deadline set forth in the 1992 Act, the Commission believes that it is appropriate to defer consideration of the application of floor trader registration requirements to persons using electronic trading systems and to reconsider the subject at a later date. In order to preserve flexibility in this area, the definition of floor trader in Rule 1.3(x) states that it shall include any person required to register as an FT by rule or regulation of the Commission pertaining to the operation of an electronic trading system. This determination does not affect the requirement of registration as an FB or an associated person (AP) for

[1] H.R. Rep. No. 978, 102d Cong., 2d Sess. 59 (1992).

[2] NYMEX commented, however, that: [I]t is in the public interest to require a person located in the United States who trades solely for his own account through an electronic trading system sponsored by a contract market, to be required to register with the Commission as an FT. Such a registration burden is not unduly onerous and creates a level playing field among traders on the floor and computer accessed traders.

The Commission also notes that persons engaged in trading through the GLOBEX system are subject to certain screening and disciplinary procedures. See e.g., CME Rules 106 J., 400, 441A, 413d, 414(4) and 581.

certain terminal operators using electronic trading systems as specified by the Commission when it approved such systems.

The Commission requested comment in the proposals as to whether persons who hold trading privileges but do not exercise such privileges should be required to register as FTs and, if not, what mechanisms are currently in place or can be established at contract markets to prevent such persons from trading for their own accounts on a contract market floor or through a contract market electronic system without registration as an FT. The Commission noted, for example, that some persons may have leased their seats to others or may be holding the seat for investment purposes only. Separately, the Commission recognized that there may be persons who are listed as principals of futures commission merchants, for example, and who have a contract market membership listed in their own name which they have assigned to the firm. Where such persons do not trade for their own account on the floor of or through an electronic system operated by a contract market, such persons would not be required to register as FTs. However, there may be other persons who hold contract market trading privileges but have chosen not to exercise such privileges and are not registered or listed as principals of a registrant. The Commission requested comment as to the appropriate treatment of such persons with respect to application of registration requirements. 58 FR 6748, 6749.

The commenters were strongly divided on this issue. Three contract markets stated that persons who hold trading privileges but do not exercise them should be required to register as FTs; other contract markets opposed that view. One contract market responded to this request for comment by noting that it views its members as either having floor trading privileges or not. Those members with such privileges have unrestricted access to the floor, provided they wear a badge with a specific alpha-numeric code. Those members who have not been granted floor trading privileges have their access to the floor restricted in accordance with rules of the contract market. This contract market commenter stated that it did not differentiate between members with floor trading privileges who used such privileges and those who do not and, consequently, stated that all members with floor trading privileges should be registered. Another contract market stated that it is not unduly burdensome and is consistent with the public interest to require such persons to register as FTs.

The Commission agrees with these commenters that persons who hold contract market trading privileges should be registered as FTs whether or not they have chosen to exercise such privileges if they are able to exercise those privileges without further consideration or action by the contract market. The Commission also notes, however, that if persons have leased their memberships to others or are otherwise without trading privileges or access to the trading floor under contract market rules and security systems, such persons need not register as FTs.[3]

The Commission further notes that it is incumbent upon contract markets not to authorize a member to have access to trading until the person receives a TL or is granted registration as an FB or FT. Thus, these privileges and any related keycard access mechanism should not be activated for a particular person until that person receives a TL or is granted registration. Contract markets may wish to explore with NFA means of obtaining the registration status of persons who have applied to NFA in an expeditious manner. See Rule 1.62.

The Commission also notes that in order to expedite the registration process, applicants for registration as an FT or FB should consider filing with NFA a Form 8–R and fingerprint card when they commence the contract market membership application process. NFA can then send the applicant's fingerprint card to the FBI immediately in order to minimize any delay between completion of the FBI check and the granting of trading privileges. Contract markets may also wish to explore with NFA means to rapidly communicate the granting of trading privileges.

B. Temporary No-Action Position

The Commission recognizes that the FT registration requirement enacted in the 1992 Act may affect thousands of persons currently operating as FTs. These FTs are required to register under the Act since there is no provision in the 1992 Act that provides a basis for "grandfathering" such individuals so that they may continue to act as FTs without satisfying the requirements for registration. The Commission has endeavored to develop transitional registration procedures to apply to persons currently holding FT status that recognize these persons' interests in continuing to conduct business while fulfilling the Congressional mandate to integrate FTs into the registration framework of the CEAct applicable to all other registrant categories. To this end, the Commission has determined to adopt a temporary "no-action" position that, subject to the procedures set forth herein and subject to adverse actions being taken by the Commission under its part 3 rules, would permit existing FTs and those granted trading privileges on or before April 26, 1993, the effective date of the rules adopted herein, to remain in business while their registration applications are processed by NFA and the Commission.

The Commission originally proposed to have a second no-action position apply to those granted trading privileges after February 2, 1993 (the date of publication of the proposals) but on or before April 26, 1993. Upon reconsideration of this matter and a review of the comments, the Commission has determined that it would be administratively simpler to fulfill its statutory mandate to register FTs by adoption of a single no-action position applicable to all FTs as of April 26, 1993. The Commission recognizes that having one rather than two no-action positions may result in a greater number of persons acting as FTs under the no-action position who are subject to statutory disqualifications. The Commission intends to make review and resolution of the registration status of those persons qualifying for the no-action position but subject to a statutory disqualification a priority matter.

Rule 1.66 provides for this temporary "no-action" position.[4] The no-action position is applicable to those FTs whose trading privileges were granted on or before April 26, 1993, the effective date of these final rules. FTs whose trading privileges are granted after that date are required to comply with the normal application procedures set forth in amendments to Commission Rule 3.11.

The no-action position, set forth in paragraph (a) of Rule 1.66, will permit an FT who was granted contract market trading privileges on or before April 26, 1993 and whose trading privileges remain in effect as of that date to remain

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[3] The Chicago Board of Trade (CBT) recommended that its full members who trade exclusively at the Chicago Board Options Exchange (known as "CBOE Exercisers") should not be required to register as FTs, stating that it can ensure that CBOE Exercisers do not trade in futures or options at CBT by not granting these persons keycard access to the CBT trading floor. If such access is denied, CBOE Exercisers need not register as FTs.

[4] The Commission's temporary no-action proposal was set forth in proposed Rule 1.62-T. Federal Register procedures require that the rule designated as Rule 1.62-T in the proposals be redesignated as Rule 1.66. Accordingly, the Commission is adopting its temporary no-action position under the designation of Rule 1.66.

in business pending a final determination of his fitness for registration, unless an Administrative Law Judge (ALJ) issues an interim order suspending the no-action position as to the FT in accordance with paragraph (b) of Rule 1.66[5] or the application for registration is withdrawn.[6]

In order for FTs to qualify for relief under Rule 1.66(a), each contract market must submit to NFA by April 26, 1993 a list of FTs who were granted trading privileges on that contract market on or before April 26, 1993, whose trading privileges continue in effect, and who are not then registered as FBs.[7] Such lists must include the name, date of birth and social security number of the FTs, as well as any information known by the contract market regarding such FTs relative to matters which are set forth as statutory disqualifications in section 8a(2) of the CEAct,[8] and must be signed by the chief operating officer[9] of the contract market as specified in the rule.[10]

The Commission received an inquiry as to whether a person who retained his contract market membership but has been subject to a Commission order suspending trading privileges that expires after April 26, 1993 would be eligible for relief under the no-action position. The Commission would deem such a person ineligible for relief under the no-action position.

For an FT who is otherwise eligible for relief but who is subject to a statutory disqualification set forth in section 8a(2), the FT's contract market may file a supplemental statement signed by the chief operating officer of the contract market stating that in light of the Congressional mandate requiring registration of FTs under the Act, the contract market acknowledges its responsibility to take affirmative action to conduct appropriate surveillance of such FT.[11] If no supplemental statement is filed with regard to such a statutorily disqualified FT, the FT must cease exercising FT privileges as of April 26, 1993 pending the determination of whether to grant his application for registration. A single statement may be filed on behalf of all such potentially disqualified FTs who the contract market believes should be permitted to retain trading privileges during the registration process. The Commission believes that requiring such a supplemental statement as a condition to no-action relief permitting FTs subject to apparent statutory disqualifications to act as such pending a determination of their registration status is appropriate in light of Congress' intent, in enacting the FT registration requirement, to render FTs subject to the same fitness checks and regulatory sanctions as FBs and others who deal directly with the public.[12] This requirement is intended to further Congressional intent that FTs be appropriately screened while reducing the potential for unnecessary disruption of business pending completion of the screening process for the large number of FTs affected by the new registration requirement.

Certain commenters objected to the requirement of the supplemental statement as unnecessary paperwork that serves no useful function or as imposing higher trade practice surveillance on FTs than on other contract market members. The Commission believes this requirement will serve a useful function by requiring a contract market to consider whether it should permit persons subject to section 8a(2) statutory disqualifications to continue to trade and under what circumstances. If a contract market permits such person to continue trading, the contract market must consider the statutory disqualification as a relevant circumstance in fulfilling its obligations under Rule 1.51. The Commission understands that certain contract markets have used particularized trade practice surveillance procedures in special circumstances in the past. The Commission also believes that this provision is consistent with the requirements for conditional or restricted registration of an FT discussed *infra*, requirements which commenters generally supported. The Commission further notes that the supplemental statement imposes no higher surveillance standard for FTs in general since it relates only to those subject to section 8a(2) statutory disqualifications.

The purpose of the contract market list for the no-action position is to allow NFA to identify the persons who had received floor trading privileges on or before the relevant cut-off date (April 26, 1993), to facilitate the monitoring of filing of registration applications, and to assist the Commission in its registration determinations. The list should include all FTs at the contract market, even if the FT also is an FT at another contract market. This procedure is intended to assure that all eligible FTs can take advantage of the relief provided under Rule 1.66(a) and avoid confusion as to which contract market should be responsible for listing the FT.

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[5] The procedure in Rule 1.66(b) is modeled on Commission Rule 3.55, which permits registration of a section 8a(2) disqualified registrant to be suspended by *pendente lite* order upon notice and hearing. See also section 227 of the 1992 Act and Rule 3.56 set forth below which would provide that the registration of any person charged with certain violations of the Act or other federal or state laws may be suspended upon notice and hearing.

[6] The Commission stated in the proposals that "NFA will review the applications for registration from FTs and if such applications are deficient, NFA will so notify the FT. Such a notice will specify a time period for response and failure to respond may be deemed a request to withdraw a registration application." 58 FR 6748, 6751. NFA suggested in its comment letter that the Commission add language to clarify that a withdrawal of a registration application will terminate the no-action relief as to that person, and the Commission has done so.

[7] A registered FB need not also register as an FT in order to engage in activity as an FT, unless restricted by the rules of a contract market. However, an FT registered in some other capacity such as commodity trading advisor must, as of April 26, 1993, file a Form 8–R to indicate that he also wishes to be registered as an FT. See amendment to Commission Rule 3.4(a) *infra*.

[8] Such disqualifications include, among other things, a prior revocation or denial of registration, and felony convictions within the preceding ten years, as well as injunctions, which relate to futures or securities activity, embezzlement, theft, extortion or fraud.

[9] One commenter stated that any "senior officer," rather than only the chief operating officer as proposed by the Commission, should be a permitted signatory of registration related documents. Most contract markets raised no objection to the Commission's proposal in this regard. The Commission believes the standard should be the same for all contract markets and believes that the exchange's chief operating officer is the most appropriate signatory in this context. The requirement of a signature by the chief operating officer has been adopted as proposed. See also Rule 3.60(b)(2)(i).

[10] One commenter suggested that knowledge attributed to a contract market should only be that information imparted to the contract market from records in its possession which it is required to compile and maintain in accordance with recordkeeping requirements imposed by the CEAct and rules thereunder, as well as contract market rules. The Commission believes that knowledge attributed to a contract market will include the information referred to by the commenter as well as any other information of which the contract market is aware based upon a diligent search of records in its possession or otherwise. Another commenter indicated that a manual search of old membership files to determine possible section 8a(2) statutory disqualifications should not be required. The Commission disagrees with that comment as generally persons are deemed to have knowledge of matters in their own files.

[11] See, generally Rule 1.51 which provides, *inter alia*, that such contract market must use due diligence in maintaining a continuing affirmative action program to secure compliance with specified provisions of the Act as well as all of the contract market's bylaws, rules, regulations and resolutions which such contract market is required by the Act to enforce. The affirmative action program required by Rule 1.51 includes, among other things, surveillance of trading practices on the floor of such contract market, examination of books and records kept by contract market members, investigation of customer complaints, investigation of alleged or apparent rule violations, and "[s]uch other surveillance, record examination and investigation as is necessary to enforce such bylaws, rules, regulations and resolutions."

[12] S. Rep. No. 191, 101st Cong., 1st Sess. 47–48 (1989).

The information to be included on the contract market list regarding section 8a(2) statutory disqualifications is similar to the information which contract markets are currently required to submit regarding FBs under Rule 1.66(b). By requiring this information on the FT list, the Commission hopes to be able to expedite determinations as to registration fitness of FTs with such statutory disqualifications. FTs can also assist in expediting fitness determinations by filing a Form 8–R as soon as possible, and by including therein full explanations and related documents pertaining to any "yes" answers to the disciplinary history questions.[13] See Commission Rule 3.60(b)(2)(ii), 57 FR 23136, 23152–53 (June 2, 1992). The Commission notes that in response to the suggestions of certain commenters, contract market disciplinary actions pertaining to decorum and attire violations that are not reportable under Commission Rule 9.11 will no longer require a "yes" answer to the disciplinary history questions on Form 8–R (this will apply to all categories of registrants using the form).[14] Some commenters also suggested that disciplinary actions related to financial requirements should not result in "yes" answers. The Commission does not agree with the latter suggestion and believes its actions in this area are consistent with the requirement for reporting contract market disciplinary actions under Rule 9.11. The Commission also wishes to clarify that it is only the decorum and attire violations that are specified as not reportable under Rule 9.11 that will no longer require a "yes" answer. Other violations referred to Rule 8.27, including those relating to "the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities," will still require a "yes" answer.

If a contract market submits its FT list and supplemental statement as to any section 8a(2) disqualified FTs to NFA in a timely manner, i.e., by April 26, 1993, and the FT's registration application is timely submitted as discussed below, the Commission will not commence an enforcement proceeding against an FT on that list based solely upon the FT's failure to register or obtain a TL under section 4f of the Act and the Commission Rule 3.11, nor will the Commission commence an enforcement proceeding against the contract market under Commission Rule 1.62 based solely upon its failure to bar the FT from operating as such as of April 26, 1993.[15] Contract markets that have granted trading privileges to section 8a(2) disqualified FTs must file the supplemental statement referred to above; otherwise, such FTs will be ineligible for the relief provided under Rule 1.66(a) and therefore barred from exercising their FT privileges as of April 26, 1993 unless or until they are notified that their applications for registration have been granted.

The second step in the process of qualifying for the no-action position requires an FT whose name appears on a contract market list referred to above to submit an application for registration as an FT (or as an FB) to NFA in accordance with Commission Rule 3.11 no later than June 11, 1993.[16] If the no-action position is not perfected by filing an application by June 11, 1993, the no-action position as to such person would expire.[17] FTs are encouraged to make the required submissions as soon as possible and should not wait until the last day to file. The earlier a completed registration application is submitted the earlier the person's registration status can be resolved. Rule 3.11 requires the FT to submit a Form 8–R and a fingerprint card to NFA. If those submissions are made on a timely basis, i.e., by June 11, 1993, the no-action positions with respect to the FT and the contract market are extended until the FT is granted or denied registration under the Act, unless, as noted above, an ALJ issues an interim order under Rule 1.66(b) suspending the no-action status of the FT or the registration application is withdrawn. Determinations as to whether to initiate a proceeding under Rule 1.66(b) will be made by the Commission on a case-by-case basis.[18] If an FT does not make the required submissions within the time allowed, the no-action position will terminate as to that FT and the contract market will be notified by the Commission that such person cannot act as an FT.

FTs who would be eligible for relief under Rule 1.66(a) should pay particular attention to the disciplinary history questions of Form 8–R. False statements on the Form 8–R are a separate ground for denying registration[19] and a "yes" answer to a disciplinary history question may not necessarily result in denial of registration depending upon the nature and circumstances of the particular matter involved. One commenter requested that the Commission make clear that persons who had previously settled a Commission enforcement action by agreeing not to apply for registration in any capacity but who retained trading privileges may now apply for registration in the new FT registration category without being deemed to violate their prior agreement. The Commission will not preclude application for registration in this context but cautions that this does not necessarily mean the application will be granted.

The no-action position as to an FT whose name appears on a timely-filed contract market list will continue until his registration is granted or denied, unless and until the FT fails to file a Form 8–R by the date required, an ALJ issues an interim order under Rule 1.66(b) suspending the no-action status of the FT or the registration application is withdrawn. If a Rule 3.60 registration proceeding were initiated without the accompanying suspension of no-action status, denial of registration would not become final and the person could

[13] The disciplinary history questions generally correspond to the grounds for statutory disqualification set forth in section 8a(2) and 8a(3) of the CEAct. They require disclosure of, among other things, a prior revocation or denial of registration, injunctions relating to futures or securities activity, felony convictions, certain misdemeanor convictions (such as those involving the commodities or securities laws, theft or fraud), a plea of *nolo contendere* to criminal charges of felonious conduct, self-regulatory organization disciplinary actions, and pending charges. A "yes" answer to a disciplinary history question may require furnishing of supplemental documents.

[14] Rule 9.11(a) provides in pertinent part that an "exchange is not required to notify the Commission of any summary action * * * which results in the imposition of minor penalties for the violation of exchange rules relating to decorum or attire.

[15] As discussed more fully below, the Commission has amended Rule 1.62 to provide generally that contract markets must enforce rules to prevent persons from acting as an FB or FT on their markets unless registered or temporarily licensed as such.

[16] The Commission proposed that registration applications be filed within 30 days after the effective date of final rules. Certain commenters requested a 60–90 day time period, and the Commission has determined that 45 days is appropriate for this purpose.

[17] The Commission notes that NFA has voted to waive the normal $70 fee for applicants who qualify for no-action relief. See Letter to Jean A. Webb, Secretary of the Commission, from Daniel J. Roth, NFA General Counsel, March 5, 1993.

[18] Certain commenters stated that there should be no suspension procedure under Rule 1.66(b) and another stated that Rule 3.55 is sufficient. The Commission disagrees with these comments. If there were no suspension procedure for persons qualifying for the no-action position, such persons would be treated more favorably than registrants. Further, since Rule 3.55 pertains to suspension of registration, a parallel rule is necessary to govern suspensions of persons operating pursuant to a no-action position.

[19] Sections 8a(2)(G) and 8a(3)(G) of the CEAct, 7 U.S.C. 12a(2)(G) and 12a(3)(G), as amended by sections 208(d) and 208(g) of the 1992 Act, provide that registration can be denied if, among other things, an applicant willfully makes any materially false or misleading statement or omits to state any material fact in an application or any update thereto. Such false statements also could form the basis for civil or criminal prosecution under the CEAct.

continue acting as an FT until the FT has had an opportunity for a hearing and any appeal to the Commission. Thus, in general the Commission would treat such persons in a manner similar to that accorded registrants under the Act and a proceeding against them as if it were a proceeding to revoke the registration of a registrant.[20]

The Commission further notes that all registrants and applicants for registration, including FTs eligible for no-action relief as discussed herein, have an obligation under Commission Rule 3.31 to report promptly, by means of a Form 3–R, any deficiency, inaccuracy or change in the registration information previously provided to NFA on the original Form 8–R or a previously-filed Form 3–R. If information is disclosed on a Form 3–R or is discovered in the course of fitness checks that constitutes a statutory disqualification under section 8a(2) of the Act prior to granting registration to an FT eligible for relief in accordance with the no-action position, such FT may be subject to the procedure relating to suspension of no-action relief under Rule 1.66(b).

The Commission, by a Notice and Order published elsewhere in this edition of the **Federal Register**, has authorized NFA to perform the registration processing function for FTs as it has previously authorized NFA to perform that function for other registrant categories. The Order does not include authority for NFA to take adverse action against an FT. Thus, as is the case for FBs, any adverse action against an FT would be instituted by the Commission. Certain commenters suggested that authority to take adverse actions against FTs and FBs should be delegated to NFA. The Commission has taken this matter under advisement and may consider authorizing NFA to perform such functions at a subsequent date.

The Commission has provided in Rule 1.66(a) that the transition phase to permit those persons granted trading privileges on or before April 26, 1993 to file registration applications will end June 11, 1993, i.e., 45 days after the effective date of final rules in this area. The Commission notes, however, that no-action relief for any particular FT who qualifies for it will continue beyond June 11, 1993 until his registration status is resolved, as discussed above. Contract markets may wish to require that persons eligible for the no-action position file a copy of the Form 8–R submitted to NFA with the contract market to facilitate monitoring of eligibility for the no-action position.

C. Normal Application Procedures

An individual applying for registration as an FT who is granted trading privileges after April 26, 1993 or who otherwise is ineligible for the no-action relief discussed above would be subject to normal application procedures. In accordance with Rule 3.11, the applicant must file with NFA a Form 8–R, fingerprint card and proof of contract market trading privileges. The Commission has amended Rule 3.40 to permit such applicants to be granted TLs based on essentially the same procedure currently available to applicants for registration as APs. The Commission believes that the primary rationale of the TL procedure—to enable apparently qualified applicants to begin work as soon as possible prior to completion of a full fitness check—should apply equally to FT applicants and AP applicants.[21] The Commission also notes that currently an applicant for registration as an FB can trade solely for his own account (i.e., act as an FT) while awaiting the granting of registration as an FB. As discussed *infra*, TL procedures will also be extended to applicants for registration as FBs to enable them to trade for their own account pending the grant of registration as FBs.

The key determinant of the availability of a TL, which is set forth in Rule 3.40(a), is that the disciplinary history section of the applicant's Form 8–R contain no "yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) or 8a(3) of the CEAct. The Commission has also specified in Rule 3.40(c) that an FT applicant (and an FB applicant as well) will only be eligible for a TL if a certification signed by the chief operating officer of the contract market is filed with NFA with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges. This certification has been modified from that contained in Form 8–R for APs to accommodate FTs and FBs seeking a TL and is based upon the contract market's review of an applicant's employment, credit and other history in connection with the granting of trading privileges. A contract market may submit a single statement on behalf of all FT (and FB) applicants with respect to the reviews undertaken in connection with the granting of trading privileges.

Under the TL procedure for FT applicants, as under the procedures for AP applicants, an FT applicant must wait until receiving a TL before beginning to engage in activity as an FT. If the applicant is eligible for a TL, it should be issued promptly.[22] However, an incomplete application may delay issuance of a TL. The Commission also notes that if the applicant is ineligible for a TL because of a "yes" answer to a disciplinary history question, the FT applicant cannot commence acting as an FT unless and until registration is granted.

Commission staff have discussed with NFA staff the treatment of persons who are granted trading privileges after April 26, 1993 and who are ineligible for a TL because they must answer "yes" to a disciplinary history question and intend to work with NFA in assuring that the registration applications of such persons are reviewed as expeditiously as possible. NFA staff have indicated that they will endeavor to review and resolve fitness issues arising from "yes" answers on an expedited basis in consultation with Commission staff with the objective of providing temporary licenses where appropriate pending FBI fingerprint checks where "yes" answers do not indicate statutory disqualifications.

D. Matters Related to Registered FTs

The Commission proposed to amend Rule 3.11(b) to provide that once a person is registered as an FT, he would remain registered indefinitely as long as he continuously maintains trading privileges at a contract market. However, an FT whose registration is suspended, or whose trading privileges at all contract markets where he had such privileges were suspended, would be prohibited from engaging in FT activities during the period of suspension.

1. Brief Interruptions of Trading Privileges

The preceding paragraph sets forth the general rule on the duration of FT registration. Some commenters pointed out that FTs often have periods where they are temporarily without trading privileges but quickly regain such privileges, and that such circumstances

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[20] See 57 FR 23136 (June 2, 1992) (amending the Commission's Part 3 rules concerning adverse actions to implement the Commission's decision of *In re Kangles and Chamberlain*, (1990–1992 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990) by providing equal treatment of applicants and registrants who are subject to statutory disqualifications).

[21] 49 FR 8208, 8210 (March 5, 1984).

[22] Currently, NFA is issuing TLs to AP applicants within three business days of receipt of an application. Of course, the volume of applications received by NFA at any particular time could cause a longer period of time to pass before a TL is issued.

should not require re-registration. Certain commenters noted that FTs often lease their trading privileges and there may be periods, such as at a month-end, where a lease expires and an FT needs several days to acquire a new lease of trading privileges, or an FT may need to be away from the contract market for a period of time but intends to resume trading and re-acquire trading privileges upon his return. In order to avoid unnecessarily duplicative paperwork in such circumstances, the Commission has modified its proposal to amend Rule 3.11(b). As adopted, Rule 3.11(b) provides that if an FT loses trading privileges at all contract markets due to reasons unrelated to any disciplinary action by the Commission or a contract market, and his registration is not revoked, suspended or withdrawn, he may resume acting as an FT, and his registration as such will be deemed to continue, if he is granted trading privileges by any contract market where he has held such privileges within the preceding sixty days. No new Form 8–R or Form 3–R would be required to be filed solely on the basis of the resumption of trading privileges. FBs will be provided a similar sixty-day window for non-disciplinary interruptions of trading privileges of sixty days or less. In light of these modifications, Rule 3.31(d) has been amended to provide contract markets sixty rather than twenty days to report cessations of trading privileges.

2. Special Re-registration Procedures

If an FT were to lose trading privileges at all contract markets where he had such privileges, he is eligible to receive a TL to act as an FT if he is granted trading privileges at any contract market and he submits a new Form 8–R and fingerprint card to NFA within sixty days of termination of the former trading privileges. If the FT is eligible for a TL, the TL would be effective upon mailing of the Form 8–R, fingerprint card and proof of trading privileges but he would be subject to new fitness checks.[23] In order to be eligible to receive a TL upon mailing, the person's registration as an FT could not be suspended or revoked, he could not be subject to a pending adjudicatory proceeding under the Act or have been permitted to withdraw a registration application after institution of a proceeding under Rule 3.51 within the preceding year, he could not have any new "yes" answers to the disciplinary history questions on Form 8–R and the contract market that has granted the new trading privileges must have filed with NFA the certification referred to in Rule 3.40(c). The provisions of Rule 3.11(c)(1)(ii) as proposed and the applicant's certification in Form 8–R have been redrafted so that the FT must certify that he meets these conditions if applying for special registration in order to receive a TL upon mailing of the Form 8–R, fingerprint card and proof of trading privileges. (Similar drafting changes have been made to Rule 3.11(c)(1)(i) and Form 8–R for FBs.) In light of the ability to resume trading at a contract market where one previously had trading privileges without the need to file a new Form 8–R or even a Form 3–R as discussed above, the provisions of Rule 3.11(c)(1) would presumably only be utilized where an FT or FB is acquiring trading privileges at a new contract market.

3. An FT Seeking to Become an FB

If an FT were to lose trading privileges at all contract markets where he had such privileges and wished to register as an FB, the same special registration procedures as discussed in the preceding paragraph would apply only if that person's prior registration had not been conditioned or restricted and he had never answered "yes" to any of the disciplinary history questions on the registration application form.[24] If such person had ever answered "yes" to such a question or had his registration conditioned or restricted, even if he was previously registered as an FT despite the "yes" answer, he must apply for FB registration as if he were a new applicant. The Commission is adopting Rule 3.11(c)(1)(ii)(D) so that such a person's entire fitness history would be subject to reconsideration.[25] The Commission's reconsideration of any issue raised by such an answer would take into account that the person had previously answered "yes" and that such answer had been previously passed upon in a prior fitness inquiry.[26]

An FT who maintains trading privileges continuously at any contract market could be registered as an FB upon mailing of a Form 3–R to NFA only if his registration is not conditioned or restricted and he never had answered "yes" to any of the disciplinary history questions. If an FT wished to become an FB at the same contract market as that at which he acts as an FT but had ever answered "yes" to disciplinary history questions or had his registration conditioned or restricted, he must apply for such FB registration, like any new applicant, by filing a new Form 8–R and fingerprint card. However, the rules allow a transfer from FB to FT by means of a Form 3–R, so long as there is no break in the continuity of trading privileges (i.e., an FB has privileges only at Exchange A and desires to leave Exchange A at the close of Friday's trading session and start trading as an FT at Exchange B the following trading session).[27] A Form 3–R could also be used by an FT in the following situations: (1) To report the granting of trading privileges at an additional contract market; and (2) to move as an FT from one contract market to another with no break in the continuity of trading privileges.

4. Updating Registration Information

The Commission has also amended Rule 3.31 to include FTs, applicants for registration as FTs and those operating as FTs pursuant to no-action relief under Rule 1.66 so that these persons will be required to update their registration information promptly like other registrants and applicants. Rule 3.31 requires deficiencies, inaccuracies and changes to information on Form 8–R or a supplemental statement thereto to be promptly reported to NFA on Form 3–R. The Commission also proposed that FTs be subject to a procedure for review of registration information comparable to that for FBs (See Commission Rule 3.11(d) as amended by 57 FR 23136, 23140 and as further amended below) but that the review cycle be every three years, as opposed to the two-year cycle currently in effect for FBs.[28] The Commission requested

[23] An FB losing all trading privileges could be eligible for a TL to act as an FB at any contract market under similar conditions, and not simply to act as an FT as is the case for a TL granted where the FB had not been registered within the preceding sixty days, as discussed *infra*.

[24] It would be extremely unlikely for a conditioned or restricted FT never to have answered "yes" to a disciplinary history question.

[25] Rule 3.11(c)(1)(ii)(D) is substantively the same as proposed Rule 3.11(c)(1)(ii)(E) and the change in paragraph designation is a result of the redrafting discussed above.

[26] The procedures are similar to those now in place for an AP transferring to a new sponsoring firm. See Commission Rule 3.12(d), 17 CFR 3.12(d) (1992), as amended by 57 FR 23136, 23145–46.

[27] However, if there is any break in trading privileges, even for one day, a new Form 8–R and fingerprint card would be required.

[28] The Conference Committee Report states that:

[W]hile current Commission rules require that floor brokers must renew their registration every two years, such frequent renewals are not needed to fulfill the purposes underlying the registration of floor traders. The central goal of requiring registration of floor traders is to assure that these individuals are subject to the same background fitness checks as other Commission registrants and to allow the Commission to act with respect to the person's registration in appropriate cases. The Conferees encourage the Commission to develop means of maintaining the up-to-date status of floor trader registrations that are less frequent than the system of two-year renewals required of floor brokers who execute purchases and sales for

Continued

comment as to whether it would be less burdensome for the review cycle for FTs to be the same as for FBs, i.e., every two years. The commenters who addressed this issue said the review of registration information cycles for FBs and FTs should be uniform, either every three years for FBs and FTs or two years for FBs and four years (i.e., every other FB cycle) for FTs. The Commission has determined to conform the cycles for review of registration information at every three years for FBs and FTs and believes this is consistent with the Congressional intent cited above.

The Commission also proposed to amend Rule 1.62(b) to require contract markets to notify the Commission about Section 8a(2) statutory disqualifications regarding FTs within ten business days of the date upon which the contract market first knows of such facts (unless such facts concern a Commission initiated enforcement action) and of terminations of FT privileges for cause under Commission Rule 9.11(c). One commenter suggested that if a statutory disqualification were based on the same facts as a Commission enforcement action, even if the Commission were not a party to the action resulting in the statutory disqualification, the contract market should not be required to report the disqualification under Rule 1.62(b). The Commission does not believe that such an expansive exception can be made without undermining the utility of the reporting requirement and the amendments to Rule 1.62(b) in this regard are adopted as proposed. The Commission has, however, made two modifications to the proposed amendment to Rule 1.62(b) in response to comments received. If an FT or FB is a member of more than one contract market, only the contract market taking disciplinary action need report such action under Rule 1.62(b), and such reports can be made by facsimile transmission and/or first class mail or equivalent means.

5. Other Matters

The Commission has adopted technical, conforming changes to certain other rules to include references to FTs where there are references to FBs, including: Rule 3.4 (which provides that registration in one capacity, such as FT, does not include registration in any other capacity, such as FB, but that an FB need not also register as an FT to act as such); Rule 3.21 (fingerprint exemptions); Rule 3.33 (withdrawal from registration); [29] appendix A to part 3 (interpretative statement with respect to fitness determinations); Rule 10.1 (Commission Rules of Practice) and Rule 145.6 (public availability of registration records).

The Commission also notes that FTs and those considering applying for registration as FTs should familiarize themselves generally with the Commission's part 3 registration rules. Even though some part 3 provisions do not appear in this release because amendment thereof is unnecessary, those provisions may nevertheless be applicable to FTs. The Commission notes particularly Rules 3.1 (definitions), 3.2 (registration processing by NFA; notification of registration), 3.22 (supplemental filings), and 3.30 (current address for purpose of delivery of communications from the Commission or NFA). The Commission further notes that although only certain portions of subparts B and C of part 3, which deal with TLs and denial, suspension or revocation of registration, respectively, are being amended, FTs and potential applicants should familiarize themselves with all of the provisions of these subparts, such as termination of a TL and the procedural aspects of an adverse registration action. Those provisions of the Commission's rules that do not appear in this release may be found at title 17 of the Code of Federal Regulations, as amended by 57 FR 23136 (June 2, 1992).

The Commission also wishes to note that it is adopting, as proposed, amendments to recently adopted Rules 3.60 and 3.64 to incorporate FTs and applicants for registration as FTs into the Commission's procedures for adverse registration actions and for lifting or modifying conditions or restrictions on registration.[30] Currently, an FB subject to conditions or restrictions on his registration may be supervised by another FB who meets certain criteria set forth in the rule.[31] Sponsors of conditionally registered APs or FBs usually are the registrant's employer. The Commission has clarified the rules to provide that if a conditionally registered FB has an employer, the employer must act as the special supervisor. FTs, however, trade for their own accounts, and the supervisory relationships typically present for APs and FBs do not exist. In the absence of such routine supervisory relationships, the Commission has considered what other entities may be appropriate supervisors for conditional registration purposes. The contract market which has granted the FT trading privileges or the clearing member who handles the FT's account have existing relationships with the FT. The amendments to Rule 3.60 permit a conditioned or restricted FT to be supervised by the contract market that has granted trading privileges to the FT or by an officer of the FT's clearing member if such officer is registered or listed as a principal of a registrant under the Act, although a conditioned or restricted FB could continue to be supervised by another FB as described above. A person barred from service on self-regulatory organization governing boards or committees under Rule 1.63 is also barred from acting as a supervisor under the amendments to Rule 3.60, as is currently the case for a supervisory FB.

The Commission specifically requested comment as to how a program for supervision of a conditioned or restricted FT should be structured and whether other persons should be permitted to act as supervisors of FTs with conditioned or restricted registrations. The commenters who addressed this issue generally supported the Commission's proposal. Some contract markets indicated that it is unlikely that they would ever assume such supervisory responsibility but noted that in some circumstances this alternative could be useful. The Commission also notes, in response to another contract market commenter, that the rules do not require a contract market to assume supervisory duties for an FT with a conditional or restricted registration but simply make that option available.

customer accounts. See H.R. Rep. No. 978, 102d Cong., 2d Sess. 59 (1992).

[29] The Commission has amended Rule 3.33 to permit FTs to request withdrawal from registration using a new Form 8–W. The current withdrawal form, Form 7–W, remains applicable to firms requesting withdrawal, but any FT or FB requesting withdrawal must use Form 8–W. The use of different forms for firm and individual withdrawal requests parallels the use of Form 7–R by firms and Form 8–R by individuals when applying for registration. This applies only to voluntary withdrawals. FTs or FBs will be required to file a copy of Form 8–W with each contract market on which they hold trading privileges. Where the contract market terminates trading privileges, notice of such termination is required to be provided to NFA within sixty days under Rule 3.31(d).

[30] 57 FR 23136, 23152–55.

[31] The criteria for a supervisor under the rule amendments are that such person not be subject to a pending adjudicatory proceeding pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the CEAct and not be barred from service on SRO boards or committees based on disciplinary history. See amendments to Rule 3.60(b)(2)(i) (A) and (C). These amendments are technical and conforming in nature, and the amendment to Rule 3.60(b)(2)(i)(A) is necessitated by section 209(a)(1) of the 1992 Act redesignating subsections (a) through (d) of section 6 of the CEAct as subsections (b) through (e), respectively. That 1992 Act provision also necessitates the amendments to Rules 1.10(j)(2)(ii), 3.12(d)(1)(iv) and 3.12(i)(1)(iv) herein.

The Commission has also added a new paragraph (1) to Rule 3.60 to provide that in addition to any action with respect to the undertaking itself, the failure of a supervisor to fulfill its obligations with respect to supervision or monitoring of any conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement may be deemed a violation of Rule 3.60.[32] (This rule would also apply to sponsors of conditioned or restricted APs.) One contract market suggested deletion of any reference to a contract market in Rule 3.60(1) and other commenters sought clarification that a strict liability standard with respect to supervisory responsibility for a conditionally registered FT would not be applied. The Commission reiterates that nothing requires a contract market to act as a special supervisor under Rule 3.60. However, if a contract market does undertake that responsibility, it should generally be held to the same standard as other supervisors.

III. Matters Related to FBs

As referred to above, the Commission has adopted certain rule amendments applicable to FBs. Rule 3.40 has been amended to permit applicants for registration as an FB to receive a TL to act as an FT on essentially the same basis as an AP can receive a TL. Generally, TLs have not been available to FB applicants. The Commission's Division of Trading and Markets has previously granted no-action relief to a limited category of FB applicants who would trade only for the proprietary accounts of their employers pending the grant of registration, where the employer is not engaged in any public customer business, is not a vehicle for public participation in securities or commodity interests and does not sell partnership interests or other interests to the public.[33]

Certain commenters urged the Commission to allow FB applicants to receive TLs to act as FBs, not merely as FTs. The Commission notes that FB applicants, except for those who are the subject of Advisory 92–1 referred to above and other FB applicants who will be supervised by their employer, may not have supervisors or guarantors, unlike APs or guaranteed introducing brokers. The Commission has therefore determined to restrict TLs for FB applicants to FT activity except where the FB applicant is trading the proprietary account of his employer. This modification of the TL procedure as proposed will increase the number of FB applicants eligible for the relief provided under Advisory 92–1 by eliminating various restrictions on the activities of employer firms. Thus, until those FB applicants have completed the full fitness checks, the Commission does not believe it is appropriate at this time to allow them to deal directly with customer orders except in the circumstance where a temporarily licensed FB trades for his firm's account. However, after further experience is gained with respect to temporary licensing of FB applicants, the Commission may revisit this issue to determine whether TLs for full FB activity should be available to such applicants. The Commission will, however, permit those FB applicants using the special registration procedures described below to obtain TLs to act as FBs, since those applicants will have been previously registered within the preceding 60 days.

The Commission has amended the special registration procedures under Rule 3.11(c) applicable when an FB's registration has terminated within the preceding sixty days and he seeks to register again as an FB. Currently, so long as the FB's registration has not been revoked or suspended, he would be granted registration upon mailing of a new Form 8–R and fingerprint card to NFA. An AP in analogous circumstances under Commission Rule 3.12(d) only obtains a TL upon mailing of a new Form 8–R and fingerprint card. Since there have previously been no TLs for FB applicants, there has been no method to give an FB in these circumstances a TL and he was given a new registration, a more favorable result than for a similarly situated AP. The Commission believes that an FB seeking re-registration as an FB within sixty days of termination of his previous registration should be treated similarly to an AP and eligible for a TL to act as an FB upon mailing of a new Form 8–R and fingerprint card.[34] In addition, such an FB would be required to certify that he meets standards similar to those of an AP under Rule 3.12(d): (1) His registration as an FB could not be suspended or revoked; (2) he could not be subject to a pending adjudicatory proceeding under the Act or have been permitted to withdraw a registration application after institution of a proceeding under Rule 3.51 within the preceding year; and (3) he could not have any new "yes" answers to the disciplinary history questions on Form 8–R.

The Commission has also amended recently-adopted Rule 3.11(d) with respect to the review of FB registration information.[35] As noted above, the review cycle will be on a triennial rather than biennial basis. The Commission has also determined to amend Rule 3.11(d) to provide that NFA shall furnish each FB with a printout of current data in NFA's registration database and require that an FB make a filing with NFA only if the printed information is incorrect. In the case of incorrect information, the FB must indicate in writing what corrections need to be made and a failure to do so will be deemed a violation of Commission rules, much like a failure to report under Rule 3.31 changes in registration information previously provided to NFA. IF no corrections are necessary, no further action by the FB is required. Therefore, if an FB does not return the printout provided by NFA, the FB's registration will continue in effect and he will be deemed to have certified the current information as correct and not be deemed to have requested a withdrawal from registration unless NFA takes some further action.

The Commission also wishes to point out that all registrants and applicants for registration, including FBs, have an obligation under Rule 3.31 to report promptly, by means of a Form 3–R, any deficiency, inaccuracy or change in the registration information previously provided to NFA. This will continue to be the primary means used to maintain an accurate and current registration database for the benefit of all users.

IV. Role of Contract Markets

As noted above, under Rule 1.66(a), contract markets have a key role in obtaining no-action relief for FTs who received trading privileges on or before April 26, 1993 and who retain such privileges as of that date. Each contract market must submit a list of such persons to NFA, including name, date of birth, social security number and known

[32] Responsibility for this violation would be in addition to the responsibility of the supervisor directly arising from the undertaking or under Rule 166.3.

[33] CFTC Advisory No. 92–1, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶25,334 (July 10, 1992). The Commission is also adopting certain amendments to Rules 3.42 and 3.46 so that the bases for terminations of TLs for APs, FBs, FTs and guaranteed introducing brokers will be consistent and so that the Commission's rules and NFA's rules in this area will be consistent.

[34] Certain commenters stated that full re-registration as an FB should be available upon mailing of the new Form 8–R and fingerprint card. As noted above, the Commission has modified its proposal insofar as it would have restricted applicants for FB registration using special registration procedures to a TL to act as an FT only. Under Rule 3.11(c)(1)(i) as adopted, such applicants may obtain a TL to act as an FB. However, the Commission believes that full re-registration should await new fitness checks.

[35] 57 FR 23136, 23145.

statutory disqualifications under section 8a(2) of the CEAct, signed by the chief operating officer of the contract market, as well as a supplemental statement referred to above regarding persons subject to section 82(2) statutory disqualifications, by April 26, 1993. These lists should not include registered FBs, but should include all FTs who received trading privileges on or before April 26, 1993, even if such FTs also have trading privileges at another contract market. This process is directly relevant to the contract market as well as the FT, since under the amendments to Rule 1.62 adopted herein, a contract market is generally required to bar from acting as an FT any person not registered or temporarily licensed as such. Thus, a contract market must bar from acting as an FT a person whose name is not included on the lists referred to herein and would be subject to enforcement action for failure to do so. Commission staff will check trade register data against theses lists to confirm compliance.

The Commission also notes, as stated above, that persons whose names appear on the contract market lists who do not file a Form 8–R and fingerprint card within the time allotted will lose their no-action status and would then be required to be barred from acting as an FT by the contract market. Further, no-action status will terminate as to a person whose name appears on a contract market list if an interim order is issued by any ALJ under Rule 1.66(b) suspending the no-action position as to the FT or if the registration application is withdrawn.

The Commission has also adopted in the form in which proposed the requirement that in order for FTs and FBs to be eligible for TLs, the contract market that has granted trading privileges must file with NFA the certification under Rule 3.40(c) discussed above.

The Commission anticipates that beyond merely fulfilling their obligations under the rules, contract markets may provide valuable assistance to FTs and FT applicants in meeting their new registration obligations.

The Commission has also adopted, as proposed, an amendment to Rule 1.62 to require each contract market to have in effect and enforce rules which require ethics training of FBs and FTs, as discussed more fully below.

V. Role of NFA

As noted above, the Commission has issued an Order authorizing NFA to assume the responsibility for processing applications for registration as an FT and, where appropriate, grant TLs and registration as an FT in accordance with the standards established by the CEAct and Commission rules promulgated thereunder. The Commission has further authorized NFA to establish and maintain, on behalf of the Commission, a system of records regarding FTs and to serve as the official custodian of those Commission records.[36] The Commission has not, however, authorized NFA to deny, condition, suspend, restrict or revoke FT registrations. NFA's authority with respect to FTs is thus similar to that currently in effect with respect to FBs, other than the authority with respect to TLs.[37]

The effect of the Commission's Order authorizing NFA to perform registration processing functions with respect to FTs is that FT applicants and FTs must file all of their registration materials (Form 8–R, fingerprint card, proof of contract market trading privileges, supplemental information concerning disciplinary history, and Form 3–R) with NFA. Where it is appropriate for NFA to grant a TL or registration, it will do so.[38] However, if derogatory information is disclosed by the FT or applicant for registration as an FT, or if derogatory information is uncovered during the fitness checks, such information will be forwarded to the Commission. It is the Commission's responsibility to review such information and, where appropriate, institute adverse actions that could lead to denying, conditioning, suspending, restricting or revoking FT registration.[39] The Commission may provide guidance to NFA in the review of such information.

The Commission envisions that NFA, like the contract markets, will serve as a resource for FTs and FT applicants in meeting their new registration obligations. The NFA prepares the necessary forms referred to above as well as booklets regarding the registration process. These can be obtained through NFA's Information Center, which can be reached at 800–621–3570 (outside Illinois), 800–572–9400 (inside Illinois), or 312–781–1410. Information Center personnel are also available to answer individual questions.

Following discussion with the Commission's staff, NFA has made conforming changes in registration forms and processing procedures.[40] NFA has also adopted conforming amendments to its registration rules to take account of final Commission rules in this regard, and those rules have been separately approved by the Commission.

VI. Ethics Training for Registrants

Section 210 of the 1992 Act adds a new paragraph (b) to section 4p of the CEAct mandating ethics training for registrants.[41] That provision states that:

The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under [the CEAct], including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or State law, rule or regulation.

To implement this provision, the Commission proposed new Rule 3.34, which provides that any individual registered as a futures commission merchant (FCM), introducing broker (IB), commodity trading advisor (CTA), commodity pool operator (CPO), leverage transaction merchant (LTM), as well as all APs, or FBs or FTs must attend ethics training directed towards

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[36] Elsewhere in this edition of the Federal Register, the Commission has published a Notice under the Privacy Act of 1974 of modified descriptions of systems of records to incorporate records applicable to FTs.

[37] 51 FR 34490 (September 29, 1986). The Commission's Order also authorizes NFA to grant TLs to applicants for registration as FBs to act as FTs (and to act as FBs under the special registration procedures) and to terminate TLs pending a registration determination where appropriate.

[38] In order to grant TLs to applicants for registration as FTs or FBs, NFA must have on file from the contract market that has granted trading privileges a certification as to its review of an applicant's employment, credit and other history in connection with the granting of trading privileges, as discussed *supra*.

[39] As noted above, the Commission may consider authorizing NFA to take adverse actions against FTs and FBs at a later date.

[40] The basic changes made to Form 8–R are revisions to make reference to FTs.

[41] Section 210 of the 1992 Act identified the class of persons subject to the ethics training requirement as "registrants." The Conference Committee Report also refers to "registrants" in its discussion of the ethics training requirement. See H.R. Rep. No. 978, 102 Cong., 2d Sess. 60 (1992).

Commission registrants include both natural persons and firms. The Commission is interpreting the term "registrant" as used in Section 210 to mean natural persons including APs and principals of firms to the extent that such principals are required to be registered as APs pursuant to the Commission's interpretive statement concerning the scope of the registration requirement of Section 4k of the Act as it applies to all individuals in the line of supervisory authority with respect to persons required to register as APs under the Act. See Interpretative Statement Regarding the Scope of the Term "Supervision" in the Associated Person Registration Requirement, 45 FR 54032 (August 14, 1980).

the responsibilities described in section 210 of the 1992 Act.[42]

The Commission proposed to provide some further guidance as to the types of issues which could be addressed in ethics training by reference to the subjects referred to in the International Conduct of Business Principles[43] developed by Working Party No. 8 of the Technical Committee of the International Organization of Securities Commissions (IOSCO), which was adopted in June, 1990. Certain commenters objected to incorporation of those principles into Rule 3.34 and suggested that the IOSCO principles be used as guidelines rather than specific requirements. The Commission wishes to clarify that the IOSCO principles were meant to serve as a resource to provide guidance for ethics trainers and complement the broad wording in section 210 of the 1992 Act and were not intended as specific content requirements. The Commission has modified the text of proposed Rule 3.34 to clarify this point.

The Commission's proposal also indicated that training should be designed to focus on those functions performed by the category of registrant receiving instruction. One commenter stated that ethics training should be general and not related to a specific registration category, likening this to a general proficiency test. The Commission believes, as its proposal reflected, that training should be focused to some extent on a person's registrant category, although there will obviously be certain principles and issues common to all registrants. However, training for FTs and FBs, for example, who are not subject to NFA's proficiency testing requirement, should devote greater attention to issues relating to contract market operations than training of APs, which would have greater concentration on sales practice issues.

The Commission also proposed that an individual's initial training be at least four hours in duration and that periodic training thereafter be at least a one-hour session every three years. As to the time period within which such training must be taken, the Commission proposed a general framework of six months following registration, as mandated by the 1992 Act, and thereafter every three years. However, several exceptions to these requirements were proposed. The proposals stated that if a person is registered when Rule 3.34 becomes effective, or if a person becomes registered after Rule 3.34 becomes effective and has been registered at any time during the two-year period immediately preceding the date such individual's most recent application for registration was received by NFA,[44] the person would not be considered a "new" registrant and, accordingly, would be subject only to the periodic three-year training requirement.

Certain contract market commenters stated that duration and frequency of training should be at the contract market's discretion;[45] other commenters supported the Commission's proposal in this area.[46] The contract market commenters also inquired as to the treatment of FTs who qualify for no-action relief under Rule 1.66 with respect to ethics training. In light of these comments, and its own reconsideration of these matters, the Commission has adopted the following requirements in Rule 3.34 to clarify the requirements for ethics training: (1) An individual who is registered as of April 26, 1993 or who qualifies for no-action relief under Rule 1.66 and has received ethics training within the preceding two years (i.e., since April 26, 1991) must attend a one-hour training session within three years of the effective date of these rules (i.e., by April 26, 1996); (2) an individual who is registered as of April 26, 1993 who has not received ethics training within the preceding two years must attend a two-hour training session within three years; (3) an individual who qualifies for no-action relief under Rule 1.66 and has not received ethics training within the preceding two years must attend a four-hour training session within one year (i.e., by April 26, 1994); (4) an individual who is not registered as of April 26, 1993 and does not qualify for no-action relief under Rule 1.66, who becomes registered after that date but was registered and attended ethics training within two years immediately preceding the date of his most recent registration application, must attend ethics training within three years of his previous session or within six months of being granted registration, whichever comes later—if the session is within three years of his previous session, it must be one hour in length and if it is not within three years of his previous session, it must be four hours in length; (5) an individual who is not registered as of April 26, 1993 and does not qualify for no-action relief under Rule 1.66, who becomes registered after that date and who was not registered within two years immediately preceding the date of his most recent registration application (a "new" registrant) must attend a four-hour training session within six months of being granted registration.[47] All training sessions subsequent to the initial training session must be one hour in length and attended within three years of the preceding session. The Commission believes that this schedule is consistent with the Congressional mandate regarding ethics training and a general three-year cycle for such training, while also taking into account that certain persons required to register

[42] These responsibilities are to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation. In this connection, reference to Commission interpretations and decisions with respect to specific fact situations may be helpful.

[43] These principles encompass concepts such as: To act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market; to have and employ effectively the resources and procedures which are needed for the proper performance (including supervision) of business activities; to know your customer's financial situation and investment experience; to disclose relevant material information in dealings with customers; and to avoid conflicts of interests and when they cannot be avoided, to require disclosure to the customer and authorization to continue handling the customer's business if permitted under the Act and Commission regulations.

[44] This two-year "window" corresponds to the time parameters set by NFA requiring re-passing of the National Commodity Futures Examination (Series 3 test) in order to be granted registration. NFA Registration Rule 401.

[45] One commenter stated that periodic training should only be required for a person found to have committed a rule violation within the most recent three-year period.

[46] Certain contract markets noted that what they termed ethics training only represented two hours out of a 15-hour new member seminar, but noted that the other 13 hours of instruction conformed to the Commission's proposed content requirements for ethics training. If such instruction does conform to the standards in Rule 3.34, the Commission will accept a person's attendance at such instruction in satisfaction of the four-hour requirement of Rule 3.34 without regard to the nomenclature used to describe the training.

[47] The Commission is providing, as proposed, that if a new registrant attended ethics training within six months prior to applying for registration, the requirement for training within six months after being granted registration would be considered satisfied. This assures that ethics training has been received reasonably contemporaneously with registration. Moreover, as noted in the proposal, the preparation for the Series 3 test and the items to be covered by ethics training will tend to overlap to some degree. Preparation for that test will occur shortly before registration is granted in most cases and the Commission believes if such preparation and ethics training are taken on a fairly contemporaneous basis, attending ethics training within what would likely be about one year's time would ordinarily be unnecessary. To the extent that providers of Series 3 test preparation may also wish to offer ethics training, it may be convenient to attend both training classes at about the same time, particularly for those who may be required to travel a substantial distance to attend these training sessions. The Commission is thus interpreting the six month requirement of the Act to permit training within six months prior to applying for registration or six months after registration is granted.

for the first time because of the provisions of the 1992 Act may have recently participated in contract market ethics programs.

To recapitulate, the requirements for ethics training can be summarized by reference to the following charts:

ETHICS TRAINING REQUIREMENTS

	Ethics training since 4/26/91	Next or first training required by	Duration of session	Following sessions
Registered as of 4/26/93	Yes	4/26/96	1 hour	Every 3 years for 1 hour.
Do	No	4/26/96	2 hours	Every 3 years for 1 hour.
Eligible for no-action Relief Under Rule 1.66 as of 4/26/93.	Yes	4/26/96	1 hour	Every 3 years for 1 hour.
Do	No	4/26/94	4 hours	Every 3 years for 1 hour.

	Ethics training since two years prior to most recent registration application	Next or first training required by	Duration of session	Following sessions
Registered after 4/26/93 and previously registered within 2 years of filing most recent registration application.	Yes	3 years from previous session or within 6 months from the date registration is granted, whichever comes later.	1 hour	Every 3 years for 1 hour.
Do	No	6 months from granting of registration, unless taken within 6 months prior to filing most recent registration application.	4 hours	Every 3 years for 1 hour.
Registered after 4/26/93 and not previously registered as noted above.	N/A	6 months from granting of registration, unless taken within 6 months prior to filing most recent registration application.	4 hours	Every 3 years for 1 hour.

The Commission's proposal stated that training must be provided by a self-regulatory organization as defined in Commission Rule 1.3(ee), an entity that meets the criteria set forth in section 501(c)(3) of the Internal Revenue Code (such as the Futures Industry Institute),[48] an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, or a trade association or other person approved by the Commission who offers a program for this purpose. The Commission requested comment as to whether additional criteria for vendors should be developed and whether vendor's programs should be subject to audit.

Two commenters stated that vendors should have demonstrated pedagogical expertise and knowledge of futures, and that the Commission should pre-approve all programs and adopt an audit regimen. One commenter contended that all sponsors of ethics programs should be subject to the same standards which, if explicitly stated, should render audits unnecessary. Upon consideration of the comments and its own re-evaluation of this issue, the Commission has determined that any provider of ethics training other than a self-regulatory organization as defined in Commission Rule 1.3(ee) offering ethics training to its members or employees or an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics must be approved by the Commission for this purpose. Thus, section 501(c)(3) entities who seek to offer ethics training must obtain Commission approval. The Commission believes this is appropriate since the activities of these entities may not previously have been related to the financial markets. As proposed, trade associations and other persons must also be approved by the Commission before offering ethics training to satisfy Rule 3.34. The Commission also believes that pedagogical expertise and knowledge of futures are factors that should be taken into consideration in evaluating potential offerors of ethics training, but does not believe that it is appropriate to establish specific requirements in Rule 3.34. The Commission will require any person providing ethics training under this section to maintain records of materials used in such training in accordance with Rule 1.31 so that such records will be available for inspection by Commission representatives. The Commission may also develop an audit or re-evaluation program for ethics training vendors.

When it proposed Rule 3.34, the Commission recognized that it may be difficult for registrants located substantial distances from major metropolitan areas to attend in-person ethics training sessions without incurring significant expense or business disruption. The Commission stated that it would be acceptable for such registrants to fulfill their ethics training obligation through a

[48] These criteria include: An entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (subject to certain conditions), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not attempt to participate or intervene in political campaigns.

computerized "self-training" program or the viewing of videotapes or other materials provided by appropriate vendors for which completion can be substantiated without undue burdens or registrants. Such substantiation contemplates, for example, an interactive computerized training program that requires and records the registrant's participation and return of such computer disk to the vendor for verification of such participation and the issuance of a certificate to that effect by the vendor to the registrant. The registrant must maintain that certificate as a record subject to audit, as discussed below. One contract market commenter stated that all registrants should have the opportunity to use an interactive computer program. The Commission believes that FTs and FBs will generally attend in-person training sessions sponsored by the contract market. However, the Commission may consider in its review of proposed ethics training courses whether a particular proposal that includes an interactive computer program would be appropriate for those whom attendance at an in-person session would not be unduly burdensome.

The Commission also specifically requested comment as to whether firms should be permitted to provide their own in-house training program for APs. Two commenters stated that member firms of a contract market should be allowed to use the contract market's training program to train the APs of the member firms on an in-house basis and two other commenters recommended that any in-house program be permitted. NFA, however, commented that any in-house program should be subject to Commission approval and such approval should take into account course content, the firm's disciplinary history, employment history of key personnel and those conducting training, and the firm's ability to keep the course up-to-date. The Commission agrees with this comment and the rule as adopted requires that any firm wishing to train APs in-house must apply for Commission approval.

The Commission also proposed to require maintenance of evidence of attendance at ethics training in accordance with Commission Rule 1.31. An individual registered as an FCM, IB, CTA, CPO, or LTM would have to maintain the evidence himself. In the case of an AP, each of the AP's sponsors would be required to maintain such evidence. In the case of an FB or FT, each contract market that has granted trading privileges to the FB or FT would be required to maintain such evidence. Evidence of attendance could consist of a certificate of attendance for the requisite number of hours from an appropriate vendor. The evidence of ethics training would be subject to inspection during audits of firms required to be conducted by NFA and other self-regulatory organizations (SROs) and during reviews of contract market operations. It would be part of a firm's supervisory obligation to assure that training has been attended by APs and failure of an AP to attend as required could subject both the AP and his sponsors to enforcement action. Similarly, a contract market has an affirmative obligation under the amendments to Rule 1.62 to assure that its FBs and FTs receive appropriate ethics training and failure of an FB or FT to do so could result in enforcement action against the FB or FT and the contract market.

Although the Commission proposed that evidence of ethics training be maintained subject to inspection only as discussed above, the Commission requested comment concerning a requirement that, in addition to the recordkeeping requirement, evidence of ethics training be filed with the Commission and/or, as appropriate, the relevant SRO. The commenters who addressed this issue were divided, with most stating there should be no requirement to file evidence of ethics training with the Commission. Some commenters thought such evidence should be forwarded to NFA or an SRO and that vendors should have to maintain records of training for four years. The Commission continues to believe that it is a sole proprietor's, sponsor's or contract market's responsibility to assure that ethics training is taken as required under Rule 3.34 and has determined to adopt the requirements concerning evidence of attendance at ethics training as proposed. In addition, and as a further means of verifying attendance at such training, providers of ethics training must maintain records of attendees completing such training in accordance with Rule 1.31, i.e., for a five-year period. The Commission will monitor the effectiveness of the requirement for maintaining a record of ethics training attendance and may reconsider the issue at a later date if appropriate.

One commenter indicated that some persons subject to the ethics training requirement under the Act may also be registered under the securities laws and may have ethics training requirements under those laws. The commenter stated that such persons should not be required to take two separate ethics courses. The Commission would consider approval of courses that can satisfy requirements under the Act and the securities laws, but a course that only covers the latter would not satisfy the obligations under Rule 3.34.

VII. Suspension of Registrants Charged With Felonies

Section 227 of the 1992 Act creates a new section 8a(11) of the CEAct, which authorizes the Commission to adopt rules permitting the Commission to suspend or modify the registration of any registrant under the CEAct who is charged with the commission of or participation in a crime involving a violation of the CEAct or of any other provision of federal or state law that would reflect on the honesty or the fitness of the registrant to act as a fiduciary that is punishable by imprisonment for a term exceeding one year if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. The 1992 Act provides that the Commission shall have the burden of showing that the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. Such a requirement differs from the burden associated with statutory disqualifications under sections 8a(2) and 8a(3) of the CEAct which, if shown, shift the burden to the applicant or registrant to demonstrate why his registration would not pose a substantial risk to the public. Unlike other suspensions of registration, which are limited to six months, a suspension or modification of registration under new section 8a(11) of the CEAct will remain in effect until the information, indictment or complaint forming the basis for the suspension or modification is disposed of or until the suspension or modification is terminated by the Commission.

The Commission proposed new Rule 3.56 to implement this authority. As proposed, the rule would have provided for a hearing chiefly on written submissions, although the Administrative Law Judge (ALJ) would have been required to grant an oral hearing upon the written request of the registrant unless the Division of Enforcement could demonstrate that there was no genuine issue of material fact to be determined. As part of the written submissions, a registrant charged with a crime within the section 8a(11)(A) categories could present a Supplemental Sponsor Certification Statement signed by an appropriate sponsor, floor broker or, in the case of an FT, supervising registrant or contract market in support of having his registration modified rather than suspended. The proposed Rule 3.56 was modeled on certain portions of Rules 3.55 and 3.60 as well as section 227 of the 1992 Act, with notice to the registrant, an opportunity for response by the registrant, and an opportunity for reply by the Division of Enforcement to the registrant's response. The Commission envisaged a streamlined procedure and proposed that an ALJ make his determination on such a matter within thirty days after the last written submission or oral hearing.

Comments on proposed Rule 3.56 included recommendations that there be oral hearings in all cases; that the standard of proof be clear and convincing evidence; and that an ALJ be required to provide a detailed written basis for any decision adverse to a registrant.[49] Upon reconsideration of these issues and a review of the comments, the Commission has determined to provide for oral hearings under Rule 3.56 upon request of the registrant. With respect to the standard of proof involved, since the burden on the Commission in a statutory disqualification proceeding, which can result in the revocation or denial of registration, is preponderance of the evidence, no higher standard should apply where suspension of registration is in issue. As noted above, an ALJ is required to promptly issue an order in a proceeding under Rule 3.56 and the Commission has added a provision requiring the ALJ to include a written determination setting forth the basis for his ruling.

One commenter requested clarification of Rule 3.56(f), which provides that "[a]any order of suspension or modification issued under [Rule 3.56] shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission." This provision is an almost verbatim restatement of section 8a(11)(C) of the CEAct, as added by section 227(3) of the 1992. In response to the commenter's questions, the Commission would view the indictment, information or complaint disposed of when there is an acquittal, but if a person is found or pleads guilty, the suspension would not end when the criminal case is disposed of but would continue until a subsequent proceeding under Rule 3.55 or Rule 3.60 is completed or for seventy-five days, whichever comes first; and, since one of the bases for the issuance of an order of suspension or modification of registration under Rule 3.56 is that a person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission, the Commission would not envision entertaining a petition for relief from a suspension or modification order beyond the appellate procedures set forth in the rule, prior to disposition of the information, indictment, or complaint.

The Commission reminds all registrants that, if they are indicted for or charged with commission of a felony, they are required to update their registration applications by means of a Form 3–R in accordance with Commission Rule 3.31 to note that they have a "yes" answer in response to Question 13 on Form 7–R or Question 16 on Form 8–R. Appropriate supplemental documentation should be supplied.

VIII. Effective Date

The Commission is making these rules effective as of April 26, 1993, which is less than 30 days from publication of this release. The Commission finds good cause to do so in order to comply with the statutory deadline in the 1992 Act referred to above. See 5 U.S.C. 553(d)(3) (1988).

IX. 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, FTs, 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.[50] FCMs, registered CPOs and LTMs have been determined not to be small entities under the RFA. With respect to the other registrant categories that may be affected by these rules, the Commission is carrying out Congressional mandates by proposing these rules. The Commission is incorporating registration of FTs into the existing registration structure applicable to other registrants. By providing the temporary no-action position referred to herein, as well as TLs, without biennial review of information,[51] the Commission has attempted to accomplish registration of FTs in the manner that is least disruptive to ongoing businesses and most efficient and expeditious, consistent with the public interest.

Ethics training is also being adopted pursuant to Congressional mandate. The Commission believes its schedule for periodic training and the ability to obtain training materials from an appropriate vendor in lieu of attendance at the vendor's site should reduce the potential impact of compliance with the ethics training requirement on small entities.

Suspension of registrants charged with violations within the purview of section 8a(11) is another rule adopted in response to Congressional mandate. The burden is on the Commission to demonstrate that continued registration of such person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission, so the rule being adopted under this Congressional authority should not impose an undue burden on small entities.

The Commission invited comments from any person or entity which believed the proposed rules and rule amendments would have a significant impact on its operations. No comments were received on this issue and the Commission has concluded that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990 (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 has submitted these rules and rule amendments in proposed form and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these rules and rule amendments, is as follows:

Average Burden Hours per Response—0.80

Number of Respondents—5,980

Frequency of Response—On Occasion and Triennially

[49] One commenter stated that the notice issued under Rule 3.56 should contain a "statement of the reason" why the registrant should be suspended. The Commission believes that the short and plain statement required by Rule 3.56(a)(2) provides sufficient notice to a registrant and this provision has been adopted as proposed.

[50] 47 FR 18618–18621 (April 30, 1982).

[51] See H.R. Rep. No. 978, 102 Cong., 2d Sess. 59 (1992).

The burden associated with these specific rules, as proposed to be amended, is as follows:

Average Burden Hours Per Response—0.10

Number of Respondents—5,800

Frequency of Response—On Occasion and Triennially

Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures.

17 CFR Part 3

Brokers, Registration.

17 CFR Part 10

Administrative practice and procedure.

17 CFR Part 145

Freedom of information.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections la, 4c, 4e, 4f, 4g, 4p, 6d, 8a and 17 thereof (7 U.S.C. 2, 6c, 6e, 6f, 6g, 6p, 13a-2, 12a and 21), as amended by the Futures Trading Practices Act of 1992, Public Law No. 102–546, hereby amends parts 1, 3, 10 and 145 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, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.3 is amended by revising paragraph (x) to read as follows:

§ 1.3 Definitions.

* * * * *

(x) *Floor trader.* This term means any person who, in our surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account, or has been authorized by a contract market to purchase or sell for such person's own account, any commodity for future delivery on or subject to the rules of any contract market and shall include any person required to register as a floor trader under the Act by virtue of part 33 of this chapter or by rule or regulation of the Commission pertaining to the operation of an electronic trading system.

* * * * *

3. Section 1.10 is amended by revising paragraph (j)(2)(ii) to read as follows:

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

* * * * *

(j) * * *

(2) * * *

(ii) There is filed against the futures commission merchant an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 of this chapter.

* * * * *

4. Section 1.62 is revised to read as follows:

§ 1.62 Contract market requirement for floor broker and floor trader registration.

(a)(1) 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 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 may:

(i) 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 or has been granted a temporary license as a floor broker; or

(ii) Purchase or sell solely for such person's own account, any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered or has been granted a temporary license as a floor trader, or has been granted a temporary license as a floor broker to act as a floor trader, in accordance with Section 4f of the Act and § 3.11 or § 3.40 of this chapter, and such temporary license or registration has not been terminated, revoked or withdrawn: *Provided, however,* That such contract market rules must provide that a floor broker or floor trader 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 person's registration or the suspension by a contract market of access of such person to any pit, ring, post or other place provided by such contract market for the meeting of persons engaged in purchasing and selling any commodity for future delivery or commodity option on or subject to the rules of that contract market.

(2) 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 which provide for requests for withdrawal of floor broker or floor trader registration using Form 8–W in accordance with § 3.33 of this chapter, which require training of floor brokers and floor traders in accordance with § 3.34 of this chapter and which require review of registration information by floor brokers and by floor traders every three years in accordance with § 3.11(d) of this chapter.

(b) Each contract market must notify the Commission of any facts regarding a floor broker or floor trader or an applicant for registration as a floor broker or floor trader, or a floor trader whose name appears on a list submitted in accordance with § 1.66 in order to qualify for a temporary no-action position thereunder, who has been granted trading privileges at the contract market, which are set forth as statutory disqualifications in section 8a(2) of the Act (unless such facts result from an enforcement action filed by the Commission or a disciplinary action taken by another contract market) or which are terminations of floor trading privileges for cause under § 9.11(c) of this chapter 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 facsimile transmission and/or first class 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).

5. Section 1.66 is added to read as follows:

§ 1.66 No-action positions with respect to floor traders.

(a) Notwithstanding any other provision of law, if a contract market submits to the National Futures Association by April 26, 1993 a list of floor traders who were granted trading privileges on that contract market on or before April 26, 1993, and whose floor trading privileges remain in effect, which includes the name, date of birth and social security number of such floor traders, as well as facts regarding such floor traders which are set forth as statutory disqualifications in section 8a(2) of the Act if the contract market knows of such facts, and such list is signed by the chief operating officer of the contract market, the Commission will not commence an enforcement proceeding against a floor trader on that list based solely upon the floor trader's failure to register or receive a temporary license under section 4f of the Act and § 3.11 of this chapter, nor will the Commission commence an enforcement proceeding against the contract market under § 1.62 for failing to bar such floor trader from operating as such: *Provided, however,* That for those floor traders listed as to whom the contract market knows of facts set forth as statutory disqualifications in section 8a(2) of the Act, the no-action position contained in paragraph (a) of this section will only apply if the contract market submits a supplemental statement signed by the chief operating officer of the contract market stating that, in light of the Congressional mandate requiring registration of floor traders under the Act, the contract market acknowledges its responsibility to take affirmative action to conduct appropriate surveillance of such floor traders. These no-action positions shall expire upon the floor's trader being granted or denied registration under the Act, or on June 11, 1993, whichever comes earliest: *Provided, however,* That if the floor trader files an application for registration in accordance with § 3.11 of this chapter with the National Futures Association by June 11, 1993, the no-action positions for the floor trader and the contract market as to the registration of such floor trader will be extended until the floor trader is granted or denied registration under the Act, unless an Administrative Law Judge issues an interim order suspending the no-action position as to such floor trader in accordance with paragraph (b) of this section or the application for registration is withdrawn.

(b) *Suspension of no-action position under paragraph (a) of this section pursuant to section 8a(2) of the Act.*—(1) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a floor trader whose name appears on a list submitted in accordance with paragraph (a) of this section that:

(i) The Commission alleges and is prepared to prove that such floor trader is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(11) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the floor trader is subject to such statutory disqualification; and

(iii) If the floor trader is found to be subject to a statutory disqualification, the no-action status of the floor trader under paragraph (a) of this section may be suspended and the floor trader ordered to show cause why registration should not be denied.

(2) *Written submission.* If the floor trader wishes to challenge the accuracy of the allegations set forth in the notice, the floor trader may submit written evidence limited to the type described in § 3.60(b)(1) of this chapter. 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 floor trader.

(3) *Reply.* Within ten days of receipt of any written submission filed by the floor trader, the Division of Enforcement may serve upon the floor trader and file with the Hearing Clerk a reply.

(4) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the floor trader is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the floor trader in response thereto, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(5) *Suspension and order to show cause.* (i) If the floor trader is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the floor trader's written submission, if any, and any reply thereto, shall issue an interim order suspending the no-action status of the floor trader under paragraph (a) of this section and requiring the floor trader to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the floor trader should not be denied. The no-action status of the floor trader shall be suspended, effective five days after the order to show cause is served upon the floor trader in accordance with § 3.50(a) of this chapter, until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the floor trader 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 not be issued and the floor trader shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however,* That in no event shall the floor trader's no-action status be suspended for a period to exceed six months.

(ii) If the floor trader 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 floor trader, 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 floor trader in accordance with the provisions of § 3.50(a) of this chapter 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 (c)(5)(ii) of this section.

(6) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (c)(5)(i) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b) through (j) of this chapter.

PART 3—REGISTRATION

6. The authority citation for part 3 is revised to read as follows:

Authority: 7 U.S.C. 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 18, 19, 21 and 23.

7. The authority citations at the end of each section and at the beginning of each subpart and appendix A are removed.

Subpart A—Registration

8. Section 3.4 is amended by revising paragraph (a) to read as follows:

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

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, floor broker, floor trader, associated person, commodity trading advisor, commodity pool operator, introducing broker, and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided, however,* That a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

* * * * *

9. Section 3.11 is revised to read as follows:

§ 3.11 Registration of floor brokers and floor traders.

(a) *Application for registration.* (1) Application for registration as a floor broker or floor trader must be on Form 8–R, completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 8–R filed in accordance with paragraph (a) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association, except that a fingerprint card need not be filed by any applicant who has a current Form 8–R on file with the Commission or the National Futures Association.

(2) An applicant for registration as a floor broker or floor trader will not be registered or issued a temporary license as a floor broker or floor trader unless the applicant has been granted trading privileges by a board of trade designated as a contract market by the Commission. A temporary license issued to an applicant for registration as a floor broker who has not been registered as a floor broker within the preceding sixty days will permit such applicant to act in the capacity of a floor trader only.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will provide notification in writing to the applicant and to any contract market that has granted the applicant trading privileges that the applicant's registration or temporary license as a floor broker or floor trader is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader 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: *Provided, That* if a floor broker or floor trader whose trading privileges on all contract markets have ceased for reasons unrelated to any Commission action or any contract market disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market where he held such privileges within the preceding sixty days, such registration as a floor broker or floor trader, respectively, shall be deemed to continue and no new Form 8–R or Form 3–R need be filed solely on the basis of the resumption of trading privileges. A floor broker or floor trader is 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), each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person's trading privileges on such contract market have ceased.

(c) *Special registration for certain persons operating at a new contract market.* (1)(i) *Floor broker.* Any person whose registration as a floor broker has terminated within the preceding sixty days and who is granted trading privileges by any contract market that has made the certification required under § 3.40(c) will be granted a temporary license to act in the capacity of a floor broker upon mailing to the National Futures Association of a Form 8–R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor broker 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 supervising floor broker (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (C)) that contains conditions identical to those agreed to by the previous supervising floor broker, provided that such person includes written certifications stating that:

(A) His registration as a floor broker is not suspended or revoked;

(B) There is no pending adjudicatory proceeding against him under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or § 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51; and

(C) The Disciplinary History questions (items 14–18) of his registration application contain 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.

(ii) *Floor trader.* Any person whose registration as a floor trader has terminated within the preceding sixty days and who is granted trading privileges by any contract market that has made the certification required under § 3.40(c) will be granted a temporary license to act in the capacity of a floor trader upon mailing to the National Futures Association of a Form 8–R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor trader 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 supervising registrant, principal or contract market (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (C)) that contains conditions identical to those agreed to by the previous supervising registrant, principal or contract market, provided that such person includes written certifications stating that:

(A) His registration as a floor trader is not suspended or revoked;

(B) There is no pending adjudicatory proceeding against him under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or § 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51; and

(C) The Disciplinary History questions (items 14–18) of his registration application contain 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.

(D) If such person is seeking registration as a floor broker, he will be granted a temporary license to act in the capacity of floor trader only if his prior registration was not subject to conditions or restrictions and such person's previously filed Form 8–R and Forms 3–R, if any, contain no "Yes" answers to the Disciplinary History questions (items 14–18) and his new Form 8–R also contains no "Yes" answers to the Disciplinary History questions (items 14–18).

(F) A temporary license received in accordance with paragraph (c)(1) of this section will be subject to the provisions of §§ 3.41, 3.42 and 3.43.

(2) *Transfer of registration category where there is no break in continuity of trading privileges.* (i) Any person registered as a floor broker who continuously maintains trading privileges at any contract market that has made the certification required under § 3.40 will be registered as, and in the capacity of, a floor trader upon mailing to the National Futures Association of a Form 3–R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, accompanied by evidence of the granting of trading privileges at the new contract market, if applicable. Any person changing registration categories in accordance with this paragraph shall remain subject to any conditions or restrictions applicable to the previous registration.

(ii) Any person registered as a floor trader whose registration is not subject to conditions or restrictions and who continuously maintains trading privileges at any contract market that has made the certification required under § 3.40 will be registered as, and in the capacity of, a floor broker upon mailing to the National Futures Association of a Form 3–R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, provided his previously filed Form 8–R and any Forms 3–R, as well as the Form 3–R indicating the intention to change registration category, contain no "Yes" answers to the Disciplinary History questions (items 14–18), accompanied by evidence of the granting of trading privileges at the new contract market, if applicable.

(d) *Review of floor broker or floor trader registration information.* Every three years, the National Futures Association shall provide each floor broker and floor trader with a printout of information contained in the National Futures Association's registration database regarding such registrant. This printout shall be promptly reviewed by the floor broker or floor trader. If the information contained therein is correct, the floor broker or floor trader need not take any further action. If the information contained therein is incorrect, the floor broker or floor trader must indicate what changes are necessary and return the printout promptly to the National Futures Association with appropriate changes. The failure of a registrant to return the printout will be deemed to constitute recertification of the registration information contained therein: *Provided, however,* That the failure to return the printout promptly to the National Futures Association with appropriate changes, if necessary, shall be deemed a violation of this rule under the Act.

10. Section 3.12 is amended by revising paragraphs (d)(1)(iv) and (i)(1)(iv) 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.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or § 3.55, 3.56 or 3.60 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 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

* * * * *

(i) * * *

(1) * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or § 3.55, 3.56 or 3.60 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 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

* * * * *

11. Section 3.21 is amended by revising paragraph (b)(2) to read as follows:

§ 3.21 Exemptions from fingerprinting requirements in certain cases.

* * * * *

(b) * * *

(2) *With respect to fingerprints of a floor broker or floor trader.* The applicant for registration; or

* * * * *

12. Section 3.31 is amended by revising the first sentence of paragraph (a), and paragraphs (b) and (d) to read as follows:

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

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Schedule D of Form 7–R which no longer renders accurate and current the information contained therein. * * *

(b) Each applicant or registrant as a floor broker, floor trader or associated person, each person who qualifies for the temporary no-action position under § 1.66 of this chapter, and each principal of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which renders no longer accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

* * * * *

(d) Each contract market that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, or whose name appears on a list of floor traders submitted in accordance with § 1.66(a) of this chapter in order to qualify for the temporary no-action position thereunder, must notify the National Futures Association within sixty days after such person has ceased having trading privileges on such contract market.

* * * * *

13. Section 3.33 is amended by revising paragraph (a) introductory text, the first sentence of paragraph (b) introductory text, paragraph (e) and paragraph (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, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must be made on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8–W, completed and filed with National Futures Association in accordance with the instructions thereto. * * *

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8–W, 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. In addition, any floor broker or floor trader requesting withdrawal from registration must file a copy of his Form 8–W with each contract market that has granted him trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) 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), 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:

* * * * *

14. Section 3.34 is added to subpart A to read as follows:

§ 3.34 Mandatory ethics training for registrants.

(a) Any individual registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person, floor broker or floor trader under the Act must attend ethics training to ensure that he understands his responsibilities to the public under the Act, including responsibilities to observe just and equitable principles of trade, rules or regulations of the Commission, rules of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation.

(b) The training required by this section must:

(1) Include a description of the requirements of the Act and rules promulgated thereunder concerning treatment of customer orders and handling of customer business;

(2) Cover the subject matter referred to in paragraph (a) of this section, as it pertains to the registration category in which the person is registered or seeking registration; and

(3) Be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by a self-regulatory organization or an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, or, if its program is approved by the Commission for this purpose, an entity that meets the criteria set forth in Section 501(c)(3) of the Internal Revenue Code, a trade association or other person.

(4) Any person providing ethics training under this section must maintain records of materials used in such training and of attendees at such training in accordance with § 1.31 of this chapter. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice and persons providing ethics training shall be subject to audit by any representative of the Commission.

(c) Any person providing ethics training under this section may wish to address, as appropriate, issues such as:

(1) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(2) How to establish effective supervisory systems and internal controls;

(3) Obtaining and assessing the financial situation and investment experience of customers;

(4) Disclosure of material information in dealings with customers; and

(5) Avoidance of conflicts of interest, and when they cannot be avoided, disclosure to the customer and authorization to continue handling the customer's business if permitted under the Act and Commission rules.

(d)(1) Any individual granted registration under the Act as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person or floor broker after April 26, 1993 who has not been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, must attend training referred to in this section within six months after being granted registration, and thereafter every three years.

(2) Any individual registered as a floor trader under the Act after April 26, 1993 who has been duly registered under the Act during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, and whose name did not appear on a list submitted by a contract market to the National Futures Association in accordance with § 1.66(a) of this chapter, must attend training within six months after being granted registration, and thereafter every three years.

(3) The training required by this section for individuals described in paragraphs (d)(1) and (d)(2) of this section must be at least four hours in duration for an individual's initial session and one hour in duration for subsequent periodic sessions. The requirement that new registrants attend ethics training within six months of being granted registration may be satisfied if such training of at least four hours in duration is taken within six months prior to the registrant having filed his application for registration.

(4) All individual registrants registered as of April 26, 1993 must attend the training referred to in this section every three years beginning April 26, 1993. If such an individual has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, the duration of his next session, which must be completed by April 26, 1996, must be at least one hour and all subsequent sessions must be at least one hour. If such an individual has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, the duration of his initial session, which must be completed by April 26, 1996, must be at least two hours and all subsequent sessions must be at least one hour.

(5) Any individual registrant granted registration under the Act after April 26, 1993 who has been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's most recent application for registration was received

by the National Futures Association, must attend the training referred to in this section in accordance with the provisions of paragraph (d)(5) of this section. If such an individual has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section within the two years preceding filing of his most recent registration application with the National Futures Association, the duration of his next session, which must be completed by three years from the date of the previous session or within six months from the date registration is granted, whichever comes later, must be at least one hour and all subsequent sessions must be at least one hour. If such an individual has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since the date two years prior to the date his most recent registration application was received by the National Futures Association, the duration of his initial session, which must be completed six months from the date registration is granted, must be at least four hours and all subsequent sessions must be at least one hour.

(6) Any individual whose name appears on a list submitted by a contract market to the National Futures Association in accordance with § 1.66(a) of this chapter must:

(i) If he has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, attend his next training session by April 26, 1996, and attend subsequent training sessions every three years, all of which sessions must be at least one hour; and

(ii) If he has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, attend the training referred to in this section by April 26, 1994, which must be at least four hours, and thereafter attend training every three years for sessions of at least one hour.

(e) Evidence of attendance at ethics training, including evidence of completion of videotape or electronic training, must be maintained in accordance with § 1.31 of this chapter by:

(1) An individual registered as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, or leverage transaction merchant;

(2) In the case of an associated person, by each sponsor of the associated person; and

(3) In the case of a floor broker or floor trader, by each contract market that has granted trading privileges to the floor broker or floor trader.

Subpart B—Temporary Licenses

15. Section 3.40 is amended by revising the section heading, the introductory text of the section and paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an associated person, floor broker (which, if the applicant has not been registered as a floor broker within the preceding sixty days shall permit such applicant to act in the capacity of a floor trader only) or floor trader upon the contemporaneous filing with the National Futures Association of:

* * * * *

(c) If the applicant is applying for registration as an associated person, the sponsor's certification required by § 3.12(c) of this part, and if the applicant is applying for registration as a floor broker or floor trader, evidence that the applicant has been granted trading privileges by a contract market that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

* * * * *

16. Section 3.41 is amended by revising paragraph (a) to read as follows:

§ 3.41 Restrictions upon activities.

(a) Subject to the provisions of § 3 42 and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an associated person who has received written notification that a temporary license has been granted may act in the capacity of an associated person, an applicant for registration as a floor trader who has received written notification that a temporary license has been granted may act in the capacity of a floor trader, and an applicant for registration as a floor broker who has received written notification that a temporary license has been granted may act in the capacity of a floor broker, unless such applicant has not been registered as a floor broker within the preceding sixty days, in which case the issuance of a temporary license shall permit such applicant to act in the capacity of a floor trader only.

* * * * *

17. Section 3.42 is amended by revising paragraphs (a)(2), (a)(4), (a)(5), and (a)(6), by adding paragraphs (a)(7) and (a)(8), and by revising paragraph (b) to read as follows:

§ 3.42 Termination.

(a) * * *

(2) Immediately upon termination of the association of the applicant for registration as an associated person with the registrant which filed the sponsorship certification, or immediately upon loss of trading privileges by an applicant for registration as a floor broker or floor trader on all contract markets which filed the certification described in § 3.40(c);

* * * * *

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under section 6(e), 6b or 6c(d) 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;

(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;

(7) Immediately upon the revocation or withdrawal of the registration of the applicant's sponsor; or

(8) Immediately upon notice to the applicant and the applicant's sponsor or the contract market that has granted the applicant trading privileges that:

(i) The applicant failed to disclose relevant disciplinary history information in response to items 14 through 18 on the applicant's Form 8–R; or

(ii) An event has occurred leading to an affirmative response to any of items 14 through 18 on the applicant's Form 8–R.

(b) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person, floor broker or floor trader.

18. Section 3.43 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 3.43 Relationship to registration.

* * * * *

(b) * * *

(1) A determination by the National Futures Association that the applicant is qualified for registration as an associated person, floor broker or floor trader; or

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under section 8a(2) or 8a(3) of the Act.

19. Section 3.46 is amended by revising paragraph (a) to read as follows:

§ 3.46 Termination.

(a) A temporary license shall terminate:

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

(2) Immediately upon termination of the applicant's guarantee agreement in accordance with § 1.10(j)(4)(ii) or (j)(5) of this chapter, unless a new guarantee agreement is filed in accordance with § 3.45(b);

(3) Immediately upon the failure of an applicant to respond to a written request by the Commission or the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) in accordance with such request;

(4) Immediately upon the revocation or withdrawal of the guarantor futures commission merchant's registration;

(5) Immediately upon the withdrawal of the registration application pursuant to § 3.44(c);

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

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

(8) 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;

(9) Whenever a person not listed as a principal on the applicant's initial registration application becomes a principal under § 3.1(a); or

(10) Immediately upon notice to the applicant and the guarantor futures commission merchant that:

(i) The applicant or any principal (including any branch officer manager) failed to disclose relevant disciplinary history information in response to items 11 through 15 on the applicant's Form 7–R or items 14 through 18 on a principal's Form 8–R; or

(ii) An event has occurred leading to an affirmative response to any of items 11 through 15 on the applicant's Form 7–R or items 14 through 18 on a principal's Form 8–R.

* * * * *

20. Section 3.47 is amended by revising paragraph (b)(2) to read as follows:

§ 3.47 Relationship to registration.

* * * * *

(b) * * *

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under sections 8a(2) or 8a(3) of the Act.

Subpart C—Denial, Suspension or Revocation of Registration

21. Section 3.55 is amended by revising paragraph (e)(1) to read as follows:

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

* * * * *

(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), 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 not be issued and the registrant 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.

* * * * *

22. Section 3.56 is added to read as follows:

§ 3.56 Suspension or modification of registration pursuant to section 8a(11) of the Act.

(a) *Notice.* (1) On the basis of information obtained by the Commission, the Commission may at any time serve written notice upon a registrant in any capacity under the Act that:

(i) The Commission alleges and is prepared to prove, by reference to an information, indictment or complaint authorized by a United States Attorney or an appropriate official of any State that the registrant is charged with the commission of or participation in a crime involving a violation of the Act or a violation of any other provision of federal or state law that would reflect on the honesty or the fitness of the person to act as a fiduciary that is punishable by imprisonment for a term exceeding one year, and that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission;

(ii) An Administrative Law Judge shall make a determination, based upon written evidence and any oral hearing granted, as to whether the registrant is charged with the Commission of or participation in such a crime and whether the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission; and

(iii) If the registrant is found to be charged with the commission of or participation in such a crime and it is found that the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission, the registration of the registrant shall be suspended or modified.

(2) The notice referred to in paragraph (a) of this section shall include a short and plain statement that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in

any market regulated by the Commission.

(b) *Response.* (1) If the registrant wishes to challenge the accuracy of the allegations in the notice, the registrant may submit written evidence as to:

(i) The registrant's identity;

(ii) The existence of a clerical error in any record documenting the information, indictment or complaint;

(iii) The nature of the information, indictment or complaint; or

(iv) The statement accompanying the notice referred to in paragraph (a)(2) of this section and, in an effort to have his registration modified rather than suspended, the Supplemental Sponsor Certification Statement signed by a sponsor, supervising floor broker or, in the case of a floor trader, a supervising registrant, principal or contract market, as appropriate for the registrant in accordance with § 3.60(b)(2)(i) and who meets the standard set forth in § 3.60(b)(2)(i)(A) and (C).

(2) The registrant may also request an oral hearing, which shall include a statement of the issues to be addressed, a list of any witnesses to be called, a summary of the testimony to be elicited and copies of any documents to be introduced. An oral hearing shall be granted upon request.

(3) Such written submissions 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 under paragraph (a) of this section.

(c) *Reply.* Within ten days of receipt of any written submission filed by the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(d) *Oral hearing.* An oral hearing shall be conducted pursuant to such sections of the Commission's Rules of Practice, 17 CFR part 10, as the Administrative Law Judge deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(e) *Determination by Administrative Law Judge.* (1) A determination by the Administrative Law Judge as to whether the Division of Enforcement has shown by a preponderance of the evidence that the registrant is charged with the commission of or participation in a crime as set forth in the notice and that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission must be based upon the evidence of service, the response, if any, filed by the registrant, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit, and the oral hearing, if any. If the Division of Enforcement has made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order suspending or modifying the registration of the registrant. If the Division of Enforcement has not made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order to that effect. The Administrative Law Judge's order shall include a written determination setting forth the basis for his ruling.

(2) 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) 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) Any order of suspension or modification issued under this section shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(g) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such registrant a notice under § 3.55 or § 3.60 to suspend, restrict, or revoke the registration of such person.

(h) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under the Act or its rules.

(i) A person aggrieved by an order issued under this section may obtain review of such order in the same manner and on the same terms and conditions as are provided in Section 6(c) of the Act.

23. Section 3.60 is amended by revising paragraphs (b)(2)(i) introductory text, (b)(2)(i)(A), (b)(2)(i)(C), (b)(2)(ii)(C) and (f)(3) and by adding paragraph (l) 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.

* * * * *

(b) * * *

(2)(i) In the response, if the person is not an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, 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, a floor broker or a floor trader or an applicant for registration in any of those capacities, 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 person is an associated person or an applicant for registration as an associated person 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 whereby the sponsor 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; if the person is a floor broker or a floor trader or an applicant for registration in either capacity and intends to make such a showing, he must, in the case of a floor broker or applicant for registration as a floor broker, also submit a letter signed by his employer or if he has no employer by another floor broker or, in the case of a floor trader or applicant for registration as a floor trader, also submit a letter signed by an officer of the floor trader's clearing member, if such officer is a registrant or a principal of a registrant, or the chief operating officer of each contract market that has granted trading privileges, whereby the employer or floor broker, appropriate registrant, principal or contract market chief operating officer (on behalf of the contract market) 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, supervising employer or floor broker, supervising registrant or principal:

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

* * * * *

(C) Such person 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) * * *

(C) If the person is an associated person, floor broker or floor trader or an applicant for registration in any of those capacities, 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.

* * * * *

(f) * * *

(3) If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, 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, supervising employer or floor broker, or supervising registrant, principal or contract market may petition to lift or modify the conditions or restrictions in accordance with § 3.64.

* * * * *

(l) The failure of any sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market to fulfill its obligations with respect to supervision or monitoring of a conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement shall be deemed a violation of this rule under the Act.

24. Section 3.61 is amended by revising the section heading and paragraph (a) to read as follows:

§ 3.61 Extensions of time for proceedings brought under § 3.55, § 3.56 and § 3.60.

(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, § 3.56 or § 3.60 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.

* * * * *

25. Section 3.64 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) * * *

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

* * * * *

(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, supervising employer or floor broker, or supervising registrant, principal or contract market, 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.

* * * * *

26. Appendix A to Part 3 is amended by revising the fourth paragraph following the heading "Section 8a(2) (C) and (E)" to read as follows:

Appendix A to Part 3—Interpretative Statement With Respect to Section 8a(2) (C) and (E) and Section 8a(3) (J) and (M) of the Commodity Exchange Act

* * * * *

"if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction * * *, including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment advisor, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of the Act, or concerning securities;"

* * * * *

PART 10—RULES OF PRACTICE

27. The authority citation for part 10 continues to read as follows:

Authority: Public Law 93–463, sec. 101(a)(11), 88 Stat. 1391, 7 U.S.C. 4a(j), unless otherwise noted.

Subpart A—General Provisions

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

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning, restricting or modifying of registration as a futures commission merchant, introducing broker, or associated person, floor broker, floor trader, commodity pool operator, commodity trading advisor or leverage transaction merchant pursuant to sections 6(c), 8a(2), 8a(3), 8a(4) and 8a(11) of the Act, 7 U.S.C. 9, 12a(2), 12a(3), 12a(4) and 12(a)(11), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6(a) and 6(b) of the Act, 7 U.S.C. 8;

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

29. The authority citation for part 145 continues to read as follows:

Authority: Public Law 89–554, 80 Stat. 383, Public Law 90–23, 81 Stat. 54, Public Law 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); sec. 101(a), Public Law 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Public Law 99–570, unless otherwise noted.

30. Section 145.6 is amended by revising paragraph (b) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

* * * * *

(b)(1) The publicly available portions of Form 7–R (application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant), Form 8–R (application for registration as an associated person, floor broker, floor trader and biographical supplement to application on Form 7–R), Form 3–R (changes and corrections; multiple associations) Form 8–S (certificate of special registration), Form 8–T (notice of termination), Form 7–W (withdrawal from firm registration) and Form 8–W (withdrawal from floor broker or floor trader registration) will be available for public inspection and copying. Such registration forms will be available in the offices of the National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. Telephone: (312) 781–1300.

(2) The fingerprint card and any supplementary attachments filed in response to items 6–9 and 14–21 on Form 8–R, to item 3 on Form 8–S, to items 3–5 and 9–11 on Form 8–T, to items 9–10 on Form 7–R, to item 7 on Form 7–W or to item 7 on Form 8–W generally will not be available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. Changes or corrections to those items reported on Form 3–R will be treated similarly. When such fingerprint cards or supplementary attachments are on file, the FOI, Privacy and Sunshine Acts compliance staff will decide any request for access in accordance with the procedures set forth in §§ 145.7 and 145.9.

Issued in Washington, DC on April 9, 1993, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93–8798 Filed 4–14–93; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, and 240

[Release No. 33–6991, 34–32117; File No. S7–33–92]

RIN 3235–AF52

Passive Market Making

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a new exception to Rule 10b–6 and a new companion rule, Rule 10b–6A, under the Securities Exchange Act of 1934, which permit "passive market making" by NASDAQ market makers in connection with certain distributions of NASDAQ-quoted securities during the period when Rule 10b–6 otherwise would prohibit such activity. The new provisions apply to firm commitment distributions of NASDAQ securities that qualify for the two business day "cooling-off" period of Rule 10b–6. A passive market maker's bids and purchases are limited by the level of bids of NASDAQ market makers that are not participating in the distribution. Certain technical amendments also are being made to Rules 502 and 508 of Regulation S–B and Rules 502 and 508 of Regulation S-K under the Securities Act of 1933. The Commission will review the operation of the new rule one year following its effectiveness.

EFFECTIVE DATE: May 17, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow, M. Blair Corkran, Elizabeth Pucciarelli Hensley, or Susan H. Schleisner, Office of Trading Practices, Division of Market Regulation, at (202) 272–2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("Commission") is adopting a new exception to Rule 10b–6 [1] and a companion rule, Rule 10b–6A, under the Securities Exchange Act of 1934 ("Exchange Act"),[2] which permit "passive market making" on the National Association of Securities Dealers Inc.'s ("NASD") Automated Quotation system ("NASDAQ") during the period when Rule 10b–6 otherwise would prohibit such activity.

The Commission proposed the passive market making provisions in response to an amended petition for rulemaking filed with the Commission by the NASD in July 1992.[3] The passive market making proposal reflected a cooperative effort between the Commission and the NASD to permit a market presence by NASDAQ market makers when they or their "affiliated purchasers"[4] are engaged in a distribution for Rule 10b–6 purposes, subject to certain conditions designed to maintain the Rule's anti-manipulation objectives.

Forty-eight comment letters were received in response to the Proposing Release.[5] Forty-six commenters supported the passive market making proposal. Generally, these commenters stated that the new rule would enhance market depth and liquidity during the covered period. Twenty-one commenters suggested various modifications to the proposal. While not expressly supporting or opposing the proposal, two commenters, both of which are national securities exchanges, stated that analogous relief from the provisions of Rule 10b–6 for exchange specialists affiliated with distribution participants should be granted.

The Commission has determined to adopt the passive market making proposal with several modifications suggested by commenters. Rule 10b–6A reduces the restrictions on the market activities of broker-dealers participating in certain distributions of NASDAQ securities and thus should facilitate capital formation by NASDAQ issuers. The Commission expects the NASD, at the end of a nine month period following effectiveness of the new rule, to submit a report thoroughly analyzing the operation of Rule 10b–6A and the adequacy of its surveillance procedures governing passive market making activity. Shortly thereafter, the Commission will issue for public comment a report evaluating the effectiveness of the rule. The Commission believes that this time frame will be sufficient for the NASD and the Commission to obtain information on the operation of passive market making and make any changes, if needed, to the rule. Because the rule introduces a new construct to permit distribution participants to continue market making activities during the Rule 10b–6 cooling-off period, it may function in unanticipated ways and require adjustments prior to the end of the review period. In that event, the Commission would consider making appropriate "mid-course" adjustments prior to the expiration of this period.[6]

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[1] 17 CFR 240.10b–6.

[2] 15 U.S.C. 78(a) *et seq.*

[3] See Securities Exchange Act Release No. 31347 (October 22, 1992), 52 FR 49039 ("Proposing Release").

The NASD filed a petition for rulemaking, and an amendment thereto ("NASD Petition"), with the Commission requesting that it amend Rule 10b–6 to permit "passive market making" during certain distributions. The NASD filed the original petition on June 28, 1991, pursuant to Section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), and Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a). The original submission, supplementary material, and the July 27, 1992 amendment are available in the Commission's Public Reference Section at the address noted above in File No. S7–33–92.

[4] "Affiliated purchaser" is defined in 17 CFR 240.10b–6(c)(6).

[5] The Commission received letters from 29 NASDAQ issuers, nine broker-dealers, four associations, four self-regulatory organizations, and two law firms. A Summary of Comments has been prepared by the Division of Market Regulation ("Division") and is included in File S7–33–92. The Summary of Comments does not include one comment letter received from a broker-dealer after the Summary was prepared.

[6] The Division is conducting a general review of the operation of Rule 10b–6 and related provisions. The results of this review also may affect the Commission's evaluation of passive market making.