

### § 3.12

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(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 notify the applicant and any contract market or derivatives transaction execution facility 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as a floor broker or floor trader in accordance with paragraph (a) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets or derivatives transaction execution facilities have ceased: Provided, That if a floor broker or floor trader whose trading privileges on all contract markets or derivatives transaction execution facilities have ceased for reasons unrelated to any Commission action or any contract market or derivatives transaction execution facility disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market or derivatives transaction execution facility where he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 or derivatives transaction execution facility 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 per-

son's trading privileges on such contract market or derivatives transaction execution facility have ceased.

[58 FR 19591, Apr. 15, 1993, as amended at 64 FR 1727, Jan. 12, 1999; 67 FR 38874, June 6, 2002]

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

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

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registered in accordance with paragraphs (c), (d), (f), (i), or (j) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the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

(c) *Application for registration.* Except as otherwise provided in paragraphs

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

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless a person duly authorized by the sponsor certifies that:

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

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8-R which relate to the applicant's education and employment history during the preceding three years.

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

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8-R.

(3) Each Form 8-R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association.

(4) When the Commission or the National Futures Association determines that an applicant for registration as an associated person is not unfit for such registration, it will notify the sponsor that has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted con-

tingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

(d) *Special temporary licensing and registration procedures for certain persons.*

(1) *Registration terminated within the preceding 60 days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding 60 days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon filing by that sponsor with the National Futures Association a Form 8-R, completed in accordance with the instructions thereto and, if applicable, a Supplemental Sponsor Certification Statement filed on behalf of the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B)) stating that the new sponsor will supervise the applicant in accordance with conditions identical to those agreed to by the previous sponsor, which includes certifications stating:

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

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

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

(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 12 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; and

(v) That the sponsor has received a copy of the notice of the institution of a proceeding if the applicant has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against the applicant as described in that paragraph or that the Commission has permitted the

withdrawal of an application for registration as described in that paragraph.

(2) Any temporary license granted pursuant to paragraph (d)(1) of this section shall be terminated immediately upon notice to the sponsor of the person granted the temporary license that, within 20 days following the date the temporary license was issued, the National Futures Association has not received the applicant's fingerprints.

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

(4) The certifications permitted by paragraphs (d)(1)(i) and (v) of this section must be filed by a person duly authorized by the sponsor. The certifications permitted by paragraphs (d)(1)(ii)-(iv) must be filed by the applicant for registration as an associated person.

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

(f) *Reporting of dual and multiple associations.* (1)(i) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in §3.60(b)(2)(i) (A) and (B)) files with the National Futures Association a Form 8-R in accordance with the instructions thereto.

(ii) NFA shall notify each sponsor of the associated person that the associated person has applied to become associated with another sponsor.

(iii) Each sponsor of the associated person shall supervise that associated person and each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

(A) Solicitation or acceptance of customers' orders,

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

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

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

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

(2) Upon receipt by the National Futures Association of a Form 8-R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

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

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

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

(h) *Exemption from registration.* (1) A person is not required to register as an

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associated person in any capacity if that person is:

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

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

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

(A) Such supervisory person is not authorized to:

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

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

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

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

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

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

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

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

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

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

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provisions of paragraph (h)(2)(ii) of this section shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for or on behalf of a commodity trading advisor which is:

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

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

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

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

(ii) Exempt from registration as a commodity pool operator pursuant to the provisions of § 4.13 of this chapter or is associated with a person who is so exempt from registration: *Provided*, That the provisions of paragraph (h)(3)(ii) of this section shall not apply to the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity pool operator which is

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

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

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

(i) *Special registration or temporary licensing procedures when previous spon-*

*sor's registration ceases.* (1) Any person whose registration as an associated person in any capacity was not subject to conditions or restrictions, and was terminated within the preceding sixty days because the previous sponsor's registration was revoked or withdrawn, and who becomes associated with a new sponsor, will be registered as an associated person of such new sponsor upon the mailing by that new sponsor to the National Futures Association of written certifications stating:

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

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

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

(iv) Whether there is a pending adjudicatory proceeding under sections 6(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;

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

(vi) That the new sponsor will be responsible for supervising all activities of the person in connection with the sponsor's business as a registrant under the Act. *Provided, however*, That if such person's prior registration as an associated person was subject to conditions or restrictions, the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) must also file a signed Supplemental Sponsor Certification Statement that contains conditions identical to those agreed to by the original sponsor and, in such case, the person will be granted

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a temporary license, subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

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

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

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

Association and approved by the Commission.

(Approved by the Office of Management and Budget under control number 3038–0023)

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### § 3.13 Registration of agricultural trade option merchants and their associated persons.

(a) *Definitions.* (1) *Agricultural trade option merchant.* “Agricultural trade option merchant” means any person that is in the business of soliciting, offering to enter into, entering into, confirming the execution of, or maintaining a position in, transactions or agreements in interstate commerce which are not conducted or executed on or subject to the rules of a contract market, and which are or are held out to be of the character of, or are commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guarantee,” or “decline guarantee,” involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. Provided, however, that any person entering into such transactions solely for the purpose of managing the risk arising from the conduct of his or her own commercial enterprise is not considered to be in the business described in this paragraph.

(2) *Associated person of an agricultural trade option merchant.* “Associated person of an agricultural trade option merchant” means a partner, employee, or agent (or any person occupying a similar status or performing similar functions) that: