

Commodity Futures Trading Commission

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(b) A copy of any notice served in accordance with paragraph (a) of this section shall also be served upon:

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

(2) Any futures commission merchant which has entered into a guarantee agreement in accordance with § 1.10(j) of this chapter, if the applicant or registrant is registered as or applying for registration as an introducing broker.

(c) Documents served upon the Division of Clearing and Intermediary Oversight or upon the Division of Enforcement or filed with the Commission under this subpart shall be considered served or filed only upon actual receipt at the Commission's Washington, DC office, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(d) Except for the documents which may be served under § 3.51, any documents served upon an applicant or registrant or upon the Division of Clearing and Intermediary Oversight or the Division of Enforcement or filed with the Commission under this subpart shall be concurrently filed with the Proceedings Clerk, together with proof of service, in accordance with the provisions of § 10.12 (d) and (e) of this chapter.

[49 FR 8220, Mar. 5, 1984, as amended at 57 FR 23151, June 2, 1992; 60 FR 49334, Sept. 25, 1995; 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002]

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Act, the Commission may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

(1) The information, if true, is a basis upon which the applicant's registration may be denied;

(2) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in this subpart; and

(3) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application of the applicant will be deemed to have been withdrawn.

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

[49 FR 8220, Mar. 5, 1984, as amended at 57 FR 23151, June 2, 1992]

§§ 3.52-3.54 [Reserved]

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

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

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

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

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

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

(c) *Reply.* Within ten days of receipt of any written submission filed by the

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registrant, the Division of Enforcement may serve upon the registrant and file with the Proceedings Clerk a reply.

(d) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the registrant 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 registrant 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.

(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.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Proceedings Clerk shall promptly serve a copy of such order on the registrant, the Division of Clearing and Intermediary Oversight and the Division of Enforcement. Such order shall be effec-

tive as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of §3.50(a) of this part unless a timely application for review is filed in accordance with §10.102 of this chapter. The appellate procedures set forth in §§10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

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

[49 FR 8220, Mar. 5, 1984, as amended at 57 FR 23151, June 2, 1992; 58 FR 19595, Apr. 15, 1993; 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002]

§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