

V-363 [Revised]

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Paul Gallant,

Acting Manager, Airspace and Rules Group.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038-AC45

Termination of Associated Persons and Principals of Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") has amended Commission Regulations 3.12 and 3.31 to extend the period during which a registered futures commission merchant ("FCM"), introducing broker ("IB"), commodity trading advisor ("CTA"), commodity pool operator ("CPO") or leverage transaction merchant ("LTM") must file a notice with the National Futures Association ("NFA") to report the termination of any associated person ("AP") or principal of the registered intermediary. The amendments modify existing requirements and specify that such intermediaries must file termination notices within 30 days, rather than 20 days, after the termination of the association with any AP or principal.

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Helene D. Schroeder, Special Counsel, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418-5450; facsimile number: (202) 418-5528; and electronic mail: hschroeder@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4k of the Commodity Exchange Act ("Act")¹ makes it unlawful for persons to be associated in certain specified capacities with an FCM, IB, CPO or CTA unless the person is registered as an AP thereof under the Act.² Section 19 of the Act grants the Commission plenary authority over leverage transactions, and this authority includes the registration of APs of an LTM.³

Commission Regulation 3.12(a) makes it unlawful for any person to be associated with an FCM, IB, CTA, CPO or LTM in the capacity of an AP unless the person has registered under the Act as an AP of that sponsoring intermediary.⁴ Pursuant to Commission Regulation 3.12(c), application for registration as an AP must be on a Form 8-R and accompanied by the applicant's fingerprints, as well as a sponsor certification that meets the requirements set forth in that Regulation.

Commission Regulations 3.12(b) and 3.31(c)(1) provide for the termination of an AP's registration. Specifically, Section 3.31(c)(1) requires the sponsoring FCM, IB, CPO, CTA or LTM to file a Form 8-T notice⁵ with NFA within 20 days of either of the following events: (1) The person fails to become associated with the sponsoring FCM, IB, CTA, CPO or LTM; or (2) the association with the sponsoring firm is otherwise terminated. Commission Regulation 3.31(c)(2) provides for the termination of any principal of an FCM, IB, CPO, CTA or LTM, and it also requires the filing of a Form 8-T within 20 days after the termination of the principal's affiliation.

NFA Registration Rule 214(a) likewise specifies that such termination notices must be filed within 20 days after the termination of the affiliation of the AP or principal, and it imposes a \$100 fee upon sponsoring firms that fail to file termination notices on a timely basis. By contrast, Article V, Section 3(a) of the Bylaws of the National Association of Securities Dealers, Inc. ("NASD")⁶ specifies that members must file termination notices with respect to

registered persons, including varied securities representatives and principals thereof, within 30, rather than 20, days.⁷

Following a review of its rules and a survey of its members, NFA filed a petition ("Petition") with the Commission seeking to amend Regulation 3.31(c)(1) to increase the number of days in which a firm must file a termination notice from 20 to 30 days. The Petition was based upon concerns raised by NFA members that were dually registered as FCMs or IBs and securities broker-dealers ("BDs"). The dual registrants asserted that it is an undue regulatory burden for them to file within the 20-day period for some APs, while for the majority of their APs, securities industry requirements permit them to file within 30 days. They further asserted that the 20-day period is difficult to comply with when a termination notice contains disclosure information that must be reviewed at the branch office level, by the legal and/or registration departments of a firm, and possibly by an attorney representing the terminated AP.

II. The Proposal

In light of the Petition, the disparate regulatory requirements applicable to firms that are dual registrants, the burden that complying with the 20-day period presented, and in an effort to streamline regulatory requirements and harmonize them with the filing deadlines applicable to BDs, the Commission published in the **Federal Register** a proposal ("Proposal") to extend the period of time in which a registered FCM, IB, CPO, CTA or LTM must file a termination notice in line with NFA's proposal. The Proposal included proposed amendments to Regulations 3.12(b) and 3.31(c)(1) and (2) that would allow termination notices to be filed within 30, rather than 20, days after the association with the AP or principal is terminated.

III. Comments Regarding the Proposal

The Commission received three comments addressing its Proposal. The first comment was from a committee ("Committee") of a Bar Association, the second comment was from an association of broker/dealer and investor advisor firms and the third comment was from an industry trade association. All three commenters expressed support for the Proposal and, in particular, applauded the Commission's efforts to harmonize, align and ease requirements applicable to firms that are subject to conflicting

¹ 7 U.S.C. 1 *et seq.* (2000). The Act can be accessed at http://www.access.gpo.gov/uscode/title7/chapter1_.html.

² 7 U.S.C. 6k(1)-(3).

³ 7 U.S.C. 23.

⁴ 17 CFR 3.12(a). The Commission's regulations can be accessed at http://www.access.gpo.gov/nara/cfr/waisidx_06/17cfrv1_06.html.

⁵ Commission Regulation 3.31(c)(3) permits the filing of a Uniform Termination Notice for Securities Industry Registration (Form U-5) in lieu of a Form 8-T to report the termination of any AP or principal of the sponsoring intermediary.

⁶ In July, 2007, NASD was succeeded by the Financial Industry Regulatory Authority Inc.

⁷ The termination notice filed for securities industry registration is the Form U-5.

securities and futures regulatory requirements. The Committee additionally noted that the Proposal would provide additional time for the review of the content of termination notices by multiple parties, and it encouraged the Commission to promptly adopt the Proposal.

In light of the comments received, the Commission has decided to adopt the amendments to Regulations 3.12(b) and 3.31(a)(1) and (2) as set forth in the Proposal.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁸ requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The amendments will affect persons that are registered as FCMs, IBs, CPOs, CTAs and LTMs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.⁹ The Commission previously determined that registered FCMs, CPOs and LTMs are not small entities for the purpose of the RFA.¹⁰ With respect to the remaining persons, CTAs and IBs, the Commission stated in its Proposal that it did not believe that the proposed amendments to its regulations would place any additional burdens upon such persons inasmuch as these registrants already are subject to the requirement to file termination notices. The Commission also stated its belief that the proposed amendments actually would lessen the relevant regulatory burdens on CTAs and IBs inasmuch as they would provide these intermediaries with additional time in which to file termination notices. Accordingly, and based on Section 3(a) of the RFA,¹¹ the Acting Chairman, on behalf of the Commission, certified that the proposed amendments would not have a significant economic impact on a substantial number of small entities. The Commission invited the public to comment regarding its analysis, and no commenter specifically addressed the small business issue.

B. Cost-Benefit Analysis

Section 15(a) of the Act¹² requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its

terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission, in its discretion, may choose to give greater weight to any one of the five enumerated areas and determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The amendments concern the filing of termination notices by registered intermediaries, in particular, FCMs, IBs, CPOs, CTAs and LTMs. Specifically, the amendments will extend the period during which these registered intermediaries must file a notice with NFA to report the termination of any AP or principal of the sponsoring intermediary.

The amendments will have no effect on the protection of market participants and the public because they will not alter or modify the type or nature of information that must be filed with the Commission. Rather, they will provide registrants with additional time in which to file information that is already required to be filed and will conform the futures industry requirements to the securities industry's time allowance for filing termination notices. The amendments will enhance the efficiencies experienced by intermediaries because they will lessen burdens that make it difficult for intermediaries to comply with the time allowance provided for futures firms filing termination notices. Further, the amendments will have no effect on the following three enumerated areas: (1) Competitiveness or the financial integrity of futures markets; (2) price discovery; and (3) sound risk management practices. The Commission invited public comment on its cost-benefit analysis, but did not receive any comments addressing the issue.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") imposes certain obligations on

federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA.¹³ In its Proposal, the Commission noted that the proposed amendments to the regulations would not require a new collection of information on the part of any entities subject to them. Specifically, the Commission stated that the proposed amendments would modify existing regulatory requirements by extending the period during which registered intermediaries are required to file notices with NFA to report the termination of APs and principals of the registered intermediary and that, therefore, the estimated burden associated with the collection is not expected to increase or decrease as a result. Accordingly, for purposes of the PRA, the Commission certified that the proposed amendments would not impact the total annual reporting or recordkeeping burden associated with the above-referenced collection of information, which was previously approved by OMB. The Commission did not receive any comments regarding its analysis relative to the PRA.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Commission amends 17 CFR part 3 as follows:

PART 3—REGISTRATION

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

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

■ 2. Section 3.12 is amended by revising paragraph (b) 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.

* * * * *

(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.

¹³ 44 U.S.C. 3501 *et seq.*

⁸ 5 U.S.C. 601 *et seq.*

⁹ 47 FR 18618 (Apr. 30, 1982).

¹⁰ 47 FR 18618, 18619.

¹¹ 5 U.S.C. 605(b).

¹² 7 U.S.C. 19(a).

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), 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 thirty days thereafter.

* * * * *

■ 3. Section 3.31 is amended by revising paragraphs (c)(1) introductory text and (c)(2) to read as follows:

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

* * * * *

(c)(1) After the filing of a Form 8-R or a Form 3-R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

* * * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

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Issued in Washington, DC, on November 1, 2007, by the Commission.

David A. Stawick,

Secretary of the Commission.

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DEPARTMENT OF THE TREASURY

31 CFR Part 2

Implementing Procedures for Mandatory Declassification Review and Access to Classified Information by Historical Researchers, Former Treasury Presidential and Vice Presidential Appointees, and Former Presidents and Vice Presidents

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Section 5.4 of Executive Order 13292 requires the Department of the Treasury to promulgate implementing regulations with respect to classified national security information and to publish such regulations to the extent that they affect members of the public. These regulations relate to the processing of mandatory declassification review requests by the public and providing access to classified information, consistent with the interest of the national security, to historical researchers, former Treasury Presidential and Vice Presidential appointees, and former Presidents and Vice Presidents. The Department of the Treasury is revising its implementing regulations relating to classified national security information in 31 CFR part 2 to address only these two matters relating to the public. All other Treasury regulations pertaining to internal procedures governing classified national security information under Executive Order 13292 have been transferred to the Treasury Security Manual.

DATES: *Effective Date:* November 8, 2007.

FOR FURTHER INFORMATION CONTACT:

Robert A. McMenamin, Assistant Director (Information Security), Department of the Treasury, Office of Security Programs, Room 3180 Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, telephone (202) 622-1055 (not a toll-free number).

SUPPLEMENTARY INFORMATION: These regulations restate in pertinent part without substantive changes, existing processes for mandatory declassification review and access to classified information by historical researchers, former Treasury Presidential and Vice Presidential appointees, and former Presidents and Vice Presidents; updates the fee schedule for processing declassification review; and removes provisions in the current regulations from 31 CFR part 2 that apply to Treasury personnel and which have been transferred to the Treasury Security Manual. Accordingly, pursuant

to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and public procedures with respect to this rule are unnecessary and contrary to the public interest, and that good cause exists for making this rule effective upon the date of publication in the **Federal Register**.

Pursuant to Executive Order 12866, it has been determined that this final rule is not a significant regulatory action, and therefore a regulatory impact analysis is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. Ch 6, do not apply.

List of Subjects in 31 CFR Part 2

Archives and records, Classified information, Security measures.

■ For the reasons stated in the preamble, 31 CFR part 2 is revised to read as follows:

PART 2—NATIONAL SECURITY INFORMATION

Sec.

- 2.1 Processing of mandatory declassification review requests.
- 2.2 Access to classified information by historical researchers, former Treasury Presidential and Vice Presidential appointees, and former Presidents and Vice Presidents.

Authority: 31 U.S.C. 321, E.O. 12958, 60 FR 19825, E.O. 13292, 68 FR 15315.

§ 2.1 Processing of mandatory declassification review requests.

(a) Except as provided by section 3.4(b) of Executive Order 13292, Further Amendment to Executive Order 12958, as amended, *Classified National Security Information*, all information classified by the Department of the Treasury under these Orders or any predecessor Executive Order shall be subject to mandatory declassification review by the Department, if:

- (1) The request for a mandatory declassification review describes the document or material containing the information with sufficient specificity to enable Treasury personnel to locate it with a reasonable amount of effort;
- (2) The information is not exempt from search and review under sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. 431, 432 and 432a); and
- (3) The information has not been reviewed for declassification within the past 2 years or the information is not the subject of pending litigation.

(b) Requests for classified records originated by the Department of the Treasury shall be directed to the Office of Security Programs, Attention: