

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: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Commission Regulations 3.12 and 3.31 ("Proposed Amendments") 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. Under existing regulations, such intermediaries must file notices within 20 days after the termination of the AP or principal. The Commission's proposal ("Proposal") would provide 30, rather than 20, days for the filing of a termination notice.

DATES: Comments must be received on or before September 13, 2007.

ADDRESSES: Comments on the Proposal should be sent to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418-5521, or by e-mail to secretary@cftc.gov. Reference should be made to "Proposal Regarding the Termination of Associated Persons and Principals of Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants." Comments also may be submitted by connecting to the Federal eRulemaking Portal at <http://www.regulations.gov> and following the comment submission instructions.

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 with the entity or intermediary as an AP thereof.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.

¹ 17 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.

By contrast, Article V, Section 3(a) of the Bylaws of the National Association of Securities Dealers, Inc. ("NASD") specifies that NASD members must file termination notices with respect to registered persons, including varied securities representatives and principals thereof, within 30, rather than 20, days.⁶

II. NFA's Petition

NFA recently sought input from its members regarding possible enhancements to its online registration process. Several large NFA members that are dually registered as FCMs or IBs and securities broker-dealers ("BDs") identified as a particular problem the aforementioned disparate regulatory timelines for filing termination notices. 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 the NASD allows a 30-day period. The dual registrants also maintained 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 and then by the legal and/or registration departments of a firm. They also stated that, on occasion, an attorney representing an AP will review the notice prior to filing.

In light of the difficulties identified by dual registrants, NFA petitioned the Commission 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. NFA claims that such an extension will provide sponsoring firms the time needed to properly review the termination notices and will conform the futures industry requirements to the securities industry's time allowance. Given the disparate regulatory requirements applicable to firms that are dual registrants and the burden that complying with the 20-day period presents, the Commission believes it is appropriate to propose amendments to the relevant regulatory requirements.

III. Proposal

In accordance with the foregoing, the Proposed Amendments would extend the period of time in which a registered FCM, IB, CPO, CTA or LTM must file a notice with NFA to report the termination of any AP or principal of the registered intermediary. Under existing regulations, such intermediaries must file notices within 20 days after the termination of the AP or principal. The Proposed Amendments would

⁶ The termination notice filed by NASD members is the Form U-5.

allow termination notices to be filed within 30 days after the AP or principal is terminated. These Proposed Amendments are intended to conform the futures industry requirements to the securities industry's time allowance.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁷ requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Proposed Amendments would 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.⁸ The Commission previously determined that registered FCMs, CPOs and LTMs are not small entities for the purpose of the RFA.⁹ With respect to the remaining persons, CTAs and IBs, the Commission does not believe that the Proposed Amendments would place any additional burdens upon such persons inasmuch as these registrants already are subject to the requirement to file termination notices. Moreover, because the Proposed Amendments would provide these intermediaries with additional time in which to file termination notices, the Amendments actually would lessen the relevant regulatory burden. Accordingly, and based on Section 3(a) of the RFA,¹⁰ the Acting Chairman, on behalf of the Commission, certifies that the Proposed Amendments would not have a significant economic impact on a substantial number of small entities. However, the Commission invites the public to comment on this certification.

B. Cost-Benefit Analysis

Section 15(a) of the Act¹¹ 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 Proposed Amendments concern the filing of termination notices by registered intermediaries, in particular, FCMs, IBs, CPOs, CTAs and LTMs. Specifically, the Proposed Amendments would 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 Proposed Amendments should have no effect on the protection of market participants and the public because they would not alter or modify the type or nature of information that must be filed with the Commission. Rather, they would provide registrants with additional time in which to file information that is already required to be filed and would conform the futures industry requirements to the securities industry's time allowance for filing termination notices.

The Proposed Amendments should enhance the efficiencies experienced by intermediaries because they would lessen burdens that make it difficult for intermediaries to comply with the time allowance provided for futures firms filing termination notices.

The Proposed Amendments should 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.

After considering these factors, the Commission has determined to publish the Proposed Amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the Proposed Amendments with their comment letters.

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.¹² The Proposed Amendments will not require a new collection of information on the part of any entities subject to the Proposed Amendments. Specifically, the Proposed Amendments will 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. Although the Proposed Amendments would alter the timeframe during which information is required to be collected, the estimated burden associated with the collection is not expected to increase or decrease as a result. All affected entities already must comply with a requirement to file termination notices. Accordingly, for purposes of the PRA, the Commission certifies that the Proposed Amendments will not impact the total annual reporting or recordkeeping burden associated with the above-referenced collection of information, which has been approved previously by OMB.

Pursuant to the PRA, the Commission has submitted a copy of this certification to the Office of Management and Budget ("OMB") for its review. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418-5160.

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 proposes to amend 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 proposed to be 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

⁷ 5 U.S.C. 601 *et seq.*

⁸ 47 FR 18618 (Apr. 30, 1982).

⁹ 47 FR 18618, 18619.

¹⁰ 5 U.S.C. 605(b).

¹¹ 7 U.S.C. 19(a).

¹² 44 U.S.C. 3501 *et seq.*

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 thirty days thereafter.

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3. Section 3.31 is proposed to be 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 August 8, 2007, by the Commission.

David A. Stawick,
Secretary of the Commission.

[FR Doc. E7-15869 Filed 8-13-07; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-116215-07]

RIN 1545-BG60

Public Inspection of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that amend existing regulations issued under sections 6104 and 6110 of the Internal Revenue Code. The purpose of the proposed regulations is to clarify rules relating to information that is made available by the IRS for public inspection under section 6104(a) and materials that are made publicly available under section 6110. The changes reflect IRS practice as well as the United States Court of Appeals for the District of Columbia Circuit's decision in *Tax Analysts v. IRS*, 350 F.3d 100 (D.C. Cir. 2003). The *Tax Analysts* decision invalidated the portions of §§ 301.6104(a)-1(i) and 301.6110-1(a) that excepted rulings that denied or revoked an organization's tax exempt status from the public disclosure provisions of both sections 6104 and 6110. The proposed regulations will affect organizations exempt from Federal income tax under section 501(a) or 527, organizations that were exempt but are no longer exempt from Federal income tax, and organizations that were denied tax-exempt status.

DATES: Written or electronic comments and requests for a public hearing must be received by November 13, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-116215-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-116215-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal

eRulemaking Portal at www.regulations.gov (IRS REG-116215-07).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Kelly Banks, (202) 622-7180 (not a toll-free number); concerning the proposed regulations, Mary Ellen Keys, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Since 1950, the Internal Revenue Code has provided for the public inspection of information that is submitted to the IRS by certain exempt organizations and certain trusts. Under section 6104(a), the IRS makes available for public inspection approved applications for exemption from Federal income tax for organizations described in section 501(c) or (d) and exempt under section 501(a), notices of status filed under section 527(i) by political organizations exempt from taxation under section 527, and certain related documents. Section 6104(a) also permits the IRS to disclose whether an organization is currently recognized as exempt and the subsection and paragraph number of section 501 under which it is recognized. Section 6104(b) imposes an additional obligation on the IRS to make available for public inspection annual information returns filed by organizations exempt from Federal income tax. Section 6104(c) governs when the IRS may disclose certain information about charitable and certain other exempt organizations to state officials. Section 6104(d) imposes a parallel obligation on organizations and trusts to make available for public inspection annual returns, applications for exemption and notices of status. The proposed regulations do not address the obligations imposed by subsections (b), (c) and (d).

The decision in *Tax Analysts v. IRS*, 350 F.3d 100 (D.C. Cir. 2003), invalidated the portions of existing § 301.6104(a)-1(i)(1), (2), and (3) and § 301.6110-1(a) that excluded rulings that denied or revoked an organization's tax exempt status from the public disclosure provisions of both sections 6104 and 6110. Sections 301.6104(a)-1(i)(1), (2) and (3) excluded from disclosure by the IRS unfavorable rulings or determination letters in response to exemption applications, rulings or determination letters that make or modify a favorable determination letter, and technical advice memoranda that relate to a disapproved exemption application or the revocation or modification of a favorable determination letter. Thus,