show separately for each leverage customer a description of the securities or property received; the name and address of such leverage customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated; the dates of deposits and withdrawals from such depositories; and the date of return of such securities or property to such leverage customer, or other disposition thereof, together with the facts and circumstances of such other disposition.

(h) The requirements of paragraphs (a) through (g) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum segregation standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and §31.28 of this part.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5535, Feb. 13, 1984, as amended at 50 FR 31, Jan. 2, 1985, 50 FR 34616, Sept. 6, 1985; 50 FR 40964, Oct. 8, 1985; 54 FR 41081, Oct. 5, 1989; 54 FR 46503, Nov. 3, 1989]

§31.13 Financial reports of leverage transaction merchants.

(a) Each leverage transaction merchant who files an application for registration with the National Futures Association under §3.17 of this chapter shall submit concurrently with the filing of such application either:

(1) A Form 2–FR certified by an independent public accountant as of a date not more than 45 days prior to the date on which such report is filed; or

(2) A Form 2–FR as of a date not more than 45 days prior to the date on which such report is filed and an Form 2–FR certified by an independent public accountant as of a date not more than 1 year prior to the date on which such report is filed. Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(b)(1) Each leverage transaction merchant must file, in accordance with the requirements of paragraph (e) of this section, a Form 2–FR for each fiscal quarter of each fiscal year. The Form 2–FR filed as of the close of the leverage transaction merchant's fiscal year must be certified by an independent public accountant. Each Form 2–FR must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any Form 2–FR which must be certified by an independent public accountant must be filed no later than 90 days after the close of the leverage transaction merchant's fiscal year.

(2) The provisions of paragraph (b)(1) of this section may be met by any person registered as a leverage transaction merchant who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after April 13, 1984, by the Commission pursuant to section 19 of the Act and §31.28 of this part: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(c) Each Form 2–FR which must be certified by an independent public accountant in accordance with the provisions of paragraphs (a)(1), (a)(2) and (b)(1) of this section, must be certified in accordance with §1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of §1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of §1.16 (except paragraph (f)) of this chapter: *Provided, however,* That the term ''Form 2–FR'' shall be substituted for ''Form 1–FR'' in §1.16(c)(5) of this chapter, the term ''§31.9'' shall be substituted for the term ''§1.17,'' the term ''leverage transaction merchant'' shall be substituted

for the term ''futures commission merchant,'' and ''the segregation requirements of § 31.12'' shall be substituted for ''the segregation requirements of section 4d(2) of the Act and these regulations and the secured amount requirement of the Act and these regulations.''

(d) Upon receiving written notice from any representative of the Commission or any self-regulatory organization of which it is a member, a leverage transaction merchant shall, on a monthly basis or at such other times as specified, furnish the Commission and the self-regulatory organization, if any, with a Form 2–FR or such other financial information as requested by the representative of the Commission or the self-regulatory organization. Each such Form 2–FR or such other information must be furnished within the time specified in the written notice.

(e) The reports provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state wherein the principal place of business of the leverage transaction merchant is located, in accordance with § 140.2 of this chapter, and by the designated self-regulatory organization, if any: *Provided, however,* That firms under the jurisdiction of the Commission's Western Regional Office shall file their reports with the Southwestern Regional Office.

(f) Each Form 2–FR filed pursuant to this section which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(1) A statement of financial condition as of the date for which the report is made;

(2) A statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(3) A statement of changes in liabilities subordinated to claims of general creditors for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(4) A statement of the computation of the minimum capital requirements pursuant to § 31.9, a schedule of coverage requirements and coverage provided, and a schedule of segregation requirements and funds on deposit in segregation, as of the date for which the report is made; and

(5) In addition to the information expressly required, such further information as may be necessary to make the required statements and schedules not misleading.

(g) Each Form 2–FR filed pursuant to this § 31.13 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(1) A statement of financial condition as of the date for which the report is made;

(2) Statements of: income (loss); cash flows; changes in ownership equity; and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made: *Provided, however,* That for an applicant filing pursuant to paragraph (a) of this section, the period must be the year ending as of the date of the statement of financial condition;

(3) A statement of the computation of the minimum capital requirements pursuant to § 31.9, a schedule of coverage requirements and coverage provided, and a schedule of segregation requirements and funds on deposit in segregation, as of the date for which the report is made;

(4) Appropriate footnote disclosures; and

(5) In addition to the information expressly required, such further information as may be necessary to make the required statements and schedules not misleading.

(h) The statements required by paragraphs (g) (1) and (2) of this section may be presented in accordance with generally accepted accounting principles in the certified reports filed as of the close of the registrant's fiscal year pursuant to paragraph (b) of this section, or accompanying the application for registration pursuant to paragraph

(a) of this section, rather than in the format specifically prescribed by these regulations: *Provided, however,* That the statement of financial condition is presented in a format as consistent as possible with the Form 2–FR and a reconciliation is provided reconciling such statement of financial condition to the statement of the computation of the minimum capital requirements pursuant to §31.9. Such reconciliation must be certified by an independent public accountant in accordance with §1.16 of this chapter.

(i) Attached to each Form 2–FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 2–FR is true and correct. If the leverage transaction merchant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or, if a corporation, by the chief executive officer or chief financial officer.

(j) Any leverage transaction merchant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year in writing, concurrently with the filing of Form 2–FR pursuant to paragraph (a) of this section, but in no event may such fiscal year end more than one year from the date of the Form 2–FR filed pursuant to paragraph (a) of this section. A leverage transaction merchant which does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year. A leverage transaction merchant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year is approved upon written application to the designated self-regulatory organization.

(k) In the event any leverage transaction merchant finds that it cannot file its report for any period within the time specified in paragraphs (b) or (d) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial report was to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the designated self-regulatory organization before the time specified in paragraphs (b) or (d) of this section for filing the report. Within 10 calendar days after receipt of the application for an extension of time, the designated self-regulatory organization shall: (1) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (2) indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(l)(1) In the event a leverage transaction merchant finds that it cannot file its certified financial report and schedules for any year within the time specified in paragraph (b) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date not more than 90 days after the date as of which the certified financial report and schedules were to have been filed. The application must be submitted by the leverage transaction merchant and must:

(i) State the reasons for the requested extension;

(ii) Indicate that the inability to make a timely filing is due to circumstances beyond the control of the leverage transaction merchant, if such is the case, and describe briefly the nature of such circumstances;

(iii) Be accompanied by the latest available formal computation of its adjusted net capital and minimum financial requirements computed in accordance with §31.9;

(iv) Be accompanied by the latest available computation of required segregation and by a computation of the amount of leverage customer funds segregated pursuant to §31.12 as of the date of the latest available computation;

(v) Be accompanied by the latest available computation of required cover and by a computation of cover provided pursuant to §31.8 as of the

date of the latest available computation;

(vi) Contain an agreement to file the report on or before the date specified by the leverage transaction merchant in the application;

(vii) Be received by the designated self-regulatory organization prior to the date on which the report is due; and

(viii) Be accompanied by a letter from the independent public accountant answering the following questions:

(A) What specifically are the reasons for the extension request?

(B) On the basis of that part of your audit to date, do you have any indication that may cause you to consider commenting on any material inadequacies in the accounting system, internal accounting controls or procedures for safeguarding customer or firm assets?

(C) Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in § 31.9 or the cover or segregation requirements of these regulations, or has any significant financial or recordkeeping problems?

(2) Within 10 calendar days after receipt of an application for extension of time, the designated self-regulatory organization shall:

(i) Notify the leverage transaction merchant of the grant or denial of the requested extension; or

(ii) Indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(3) On the written request of a leverage transaction merchant, or on its own motion, the designated self-regulatory organization may grant an extension of time or an exemption from any of the certified financial reporting requirements of this section either unconditionally or on specified terms and conditions.

(m) The following portions of Form 2–FR filed pursuant to this section will be public: The statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2–FR, trade secrets and certain other commercial or financial information on such other statements and schedules, will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

(n)(1) 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 perform all functions reserved to the Commission in this section.

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 (n)(1) of this section.

[49 FR 5536, Feb. 13, 1984, as amended at 54 FR 41081, Oct. 5, 1989; 62 FR 10445, Mar. 7, 1997; 67 FR 62352, Oct. 7, 2002]

§ 31.14 Recordkeeping.

(a) All books, records and other documents required to be kept by this part shall be kept in accordance with the provisions of § 1.31 of this chapter. In addition, information concerning leverage transactions shall be made available upon request of the Executive Director, the Director of the Division of Clearing and Intermediary Oversight, the Director of the Division of Market Oversight or the Director of the Division of Enforcement, or other designees, at a time and place and in such