

following conditions. Such persons must:

(i) Identify the agricultural trade option merchant with whom the person is associated or to be associated within thirty days of the person's registration; and

(ii) Certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act.

(e) *Applications for registration.* (1) The agricultural trade option merchant, including its principals, and associated persons of an agricultural trade option merchant must apply for registration on the appropriate forms specified by the National Futures Association and approved by the Commission, in accordance with the instructions thereto, including the separate certifications from each natural person that he or she is not disqualified for any of the reasons listed in sections 8a(2) and (3) of the Act and such other identifying background information as may be specified.

(2) The agricultural trade option merchant's application must also include its most recent annual financial statements certified by an independent certified public accountant in accordance with generally accepted auditing standards prepared within the prior 12 months.

(3) These applications must be supplemented to include any changes in the information required to be provided thereon on a form specified by the National Futures Association and approved by the Commission.

(f) *Withdrawal of application for registration; denial, suspension and revocation of registration.* The provisions of §§ 3.51, 3.55, 3.56 and 3.60 shall apply to applicants for registration and registrants as agricultural trade options merchants and their associated persons under this part 3 as though they were an applicant or registrant in any capacity under the Act.

(g) *Withdrawal from registration.* An agricultural trade option merchant that has ceased or has not commenced engaging in activities requiring registration may withdraw from registration 30 days after notifying the National Futures Association on the specified form of its intent to do so, unless

otherwise notified by the Commission. Such a withdrawal notification must include information identifying the location of, and the custodian authorized to release, the agricultural trade option merchant's records, a statement of the disposition of customer positions, cash balances, securities or other property and a statement that no obligations to customers arising from agricultural trade options remain outstanding.

(h) *Dual registration of associated persons.* An associated person of an agricultural trade option merchant may be associated with other registrants subject to the provision of § 3.12(f).

[64 FR 68016, Dec. 6, 1999]

§§ 3.14–3.20 [Reserved]

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by this part to submit a fingerprint card may file, or cause to be filed, in lieu of such card:

(1) A legible, accurate and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the National Futures Association of the photocopy; or

(2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days; *Provided*, That the provisions of paragraph (a)(2) shall not be applicable to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration.

(b) Each photocopy and statement filed in accordance with the provisions of paragraph (a)(1) or (a)(2) of this section must be signed and dated. Such

§ 3.21

17 CFR Ch. I (4–1–06 Edition)

signature shall constitute a certification by that individual that the photocopy or statement is accurate and complete and must be made by:

(1) *With respect to the fingerprints of an associated person.* An officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship;

(2) *With respect to fingerprints of a floor broker or floor trader.* The applicant for registration; or

(3) *With respect to the fingerprints of a principal.* An officer, if the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal will be affiliated is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

(c) *Outside directors.* Any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2) and 3.31(a)(2), file a “Notice Pursuant to Rule 3.21(c)” with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) Is not engaged in:

(i) The solicitation or acceptance of customers’ orders,

(ii) The solicitation of funds, securities or property for a participation in a commodity pool,

(iii) The solicitation of a client’s or prospective client’s discretionary account,

(iv) The solicitation or acceptance of leverage customers’ orders for leverage transactions;

(2) Does not regularly have access to the keeping, handling or processing of:

(i) Commodity interest transactions;

(ii) Customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or

(iii) The original books and records relating to the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

(3) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (c)(1) and (c)(2) of this section; and

(4) The Notice Pursuant to Rule 3.21(c) shall also include:

(i) The name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

(ii) The nature of the duties of the outside director for whom exemption under paragraph (c) of this section is sought;

(iii) The internal controls used to ensure that the outside director for whom exemption under paragraph (c) of this section is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section; and

(iv) The reasons why the outside director believes he should be exempted from the fingerprint requirement and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought.

(d) A firm that has filed a Notice Pursuant to Rule 3.21(c) with respect to an outside director described therein must file with the National Futures Association on behalf of such outside director a Form 8-R, completed in accordance with the instructions thereto and executed by the outside director. The exemption provided for in paragraph (c) of this section is limited solely to the outside director’s fingerprint requirement and does not affect any other duties or responsibilities of the firm or the outside director under the Act or the rules set forth in this chapter. In appropriate cases, the Commission and the National Futures Association may require further information from the firm with respect to any outside director referred to in a Notice Pursuant to Rule 3.21(c).

[48 FR 35297, Aug. 3, 1983, as amended at 49 FR 5525, Feb. 13, 1984; 54 FR 19558, May 8, 1989; 57 FR 23148, June 2, 1992; 58 FR 19592, Apr. 15, 1993; 66 FR 53518, Oct. 23, 2001]