

### §31.6

### 17 CFR Ch. I (4-1-06 Edition)

a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order (other than in a clerical capacity) for a leverage contract, or to supervise any person or persons so engaged, unless that person is registered with the Commission in accordance with §3.18 of this chapter and that registration has not expired, been suspended (and the period of suspension has not expired) or been revoked.

(b) On and after April 13, 1984, it shall be unlawful for any leverage transaction merchant to permit any natural person to become or remain associated with it as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity which involves the offering to enter into, the entry into, or the confirmation of the execution of a leverage contract with a leverage customer, or the solicitation or acceptance of a leverage customer's order (other than in a clerical capacity) for a leverage contract, or the supervision of any person or persons so engaged, if the leverage transaction merchant knew or should have known that the person was not registered with the Commission in accordance with §3.18 of this chapter or that the person's registration had expired, been suspended (and the period of suspension had not expired) or been revoked.

(c) On and after November 10, 1986, it shall be unlawful for any person to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with §31.6 of this part and involves silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum. This paragraph shall not affect any rights or obligations arising out of any leverage contract involving any other leverage commodity that was entered into, or the execution of which was confirmed, before November 10, 1986.

(d) *Denial, suspension, or revocation of registration of a leverage commodity.* The failure or refusal of any leverage transaction merchant to comply with any of the provisions of the Act or any of the Commission's rules, regulations, or orders thereunder shall be cause for refusing to register a leverage commodity, for suspending registration of a leverage commodity for a period not to exceed six months, and for revoking registration of such leverage commodity with respect to that leverage transaction merchant. Any such denial, suspension, or revocation proceedings shall be conducted in accordance with the procedures set forth in sections 6 and 6(b) of the Act.

[49 FR 5528, Feb. 13, 1984, as amended at 54 FR 41078, Oct. 5, 1989; 59 FR 5703, Feb. 8, 1994]

#### §31.6 Registration of leverage commodities.

(a) *Registration of leverage commodities.* Each leverage commodity upon which a leverage contract is offered for sale or purchase or is sold or purchased by a particular leverage transaction merchant must be separately registered with the Commission. Registration will be granted only when the following conditions are, and continue to be, met:

(1) The person requesting registration of a leverage commodity is a registered leverage transaction merchant;

(2) The commodity to be registered is a leverage commodity as defined in §31.4(g);

(3) There exists a widely accepted and broadly disseminated commercial or retail cash price series for the commodity;

(4) The commodity can be readily purchased or sold in normal commercial or retail channels by leverage customers making or taking delivery on a leverage contract;

(5) The terms and conditions of the leverage contracts based on the leverage commodity are consistent with the Act and the regulations thereunder, and are not contrary to the public interest; and

(6) The terms and conditions of the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests,

## Commodity Futures Trading Commission

## § 31.6

such as options, certificates of deposit, or other regulated instruments.

(b) *Application for registration.* Applications to register leverage commodities should be filed with the Commission at its Washington, DC headquarters. Attn: Secretariat. Three copies of each such submission should be filed. The Commission may return any application which does not comply with the form and content requirements of this section. Each applicant must:

(1) Provide evidence that the person applying for registration of the leverage commodity is registered or has applied to the National Futures Association for registration as a leverage transaction merchant;

(2) Provide an explanation of the distinguishing characteristics of the leverage commodity for which registration is sought, including a complete description of the cash market for the leverage commodity, and for the spot, forward, and futures markets for the generic commodity;

(3) Specify a commercial or retail cash price series including prevailing premiums or discounts governing cash market transactions in the quantities specified by the leverage contract and justify the use of such price series with respect to the particular leverage commodity for which registration is sought;

(4) Provide evidence and a complete evaluation of how the distinguishing characteristics of the leverage commodity would be expected to affect the ability of leverage customers electing to make or take delivery of the commodity at an economic price in normal cash market channels;

(5) Include a description of the commodity inspection and/or certification procedures typically required for commercial or retail sales of the specified commodity. Such description must be accompanied by information regarding the availability of any normally required certification or inspection service at the delivery points including those of the leverage transaction merchant; and

(6) Include copies of all leverage contracts which are to be offered by the leverage transaction merchant on the leverage commodity.

(c) *Continuing registration of leverage commodities.* A registered leverage transaction merchant must submit to the Commission for its review, at least forty-five (45) days before their effective date, any proposed changes in the specifications of the leverage commodity and the terms and conditions of the leverage contract from those submitted as part of the registration application unless such contract specifically provides that such terms and conditions are subject to change. Three copies of each such submission must be furnished to the Commission at its Washington, DC headquarters. Attn: Secretariat. The Commission may return any submission which does not comply with the form and content requirements of this section. Each such submission must, in the following order:

(1) Explain how any such changes might affect the ability of leverage customers to realize the leverage commodity's economic value and how such amendments might affect the ability of leverage customers making or taking delivery to buy or sell the leverage commodity;

(2) Explain the effect of such changes upon the continued appropriateness of the commercial or retail cash price series submitted pursuant to paragraph (b)(3) of this section, or, as an alternative, submit a new price series and a justification of its use; and

(3) Indicate whether, if such changes are applied to existing leverage commodities, there will be a change in the economic value of such commodities and, if so, quantify the extent of such changes.

(d) *Authority to disapprove amendments.* The Commission may disapprove, alter, or amend changes to the distinguishing characteristics of the registered leverage commodity, or to the terms and conditions of the leverage contracts offered thereon, after appropriate notice and opportunity for hearing, when the Commission determines that such a change is in violation of any of the provisions of the Act or any of the regulations thereunder, or that it is necessary or appropriate to ensure the financial solvency of leverage transactions or prevent manipulation or fraud. Upon notification by

### §31.7

### 17 CFR Ch. I (4-1-06 Edition)

the Commission of its determination to disapprove, alter or amend such changes, the proposed changes will not become effective pending a final determination by the Commission to disapprove, alter, or amend such changes.

(e) *Authority to alter or amend specifications of the registered leverage commodity or the terms and conditions of leverage contract.* The Commission may alter or amend specific distinguishing characteristics of the registered leverage commodity or the terms and conditions of leverage contracts after appropriate notice and opportunity for hearing when the Commission determines that, in light of intervening events, such alterations or amendments would be necessary or appropriate to ensure the financial solvency of leverage transactions or prevent manipulation or fraud.

(f)(1) The Commission hereby delegates to the Director of the Division of Market Oversight until such time as the Commission orders otherwise, all functions reserved to the Commission in paragraphs (b) and (c) of this section.

(2) The Director of the Division of Market Oversight may submit any matter which has been delegated to the Director under paragraph (f)(1) of this section to the Commission for its consideration.

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

[49 FR 5529, Feb. 13, 1984, as amended at 50 FR 27, Jan. 2, 1985; 50 FR 2283, Jan. 16, 1985; 54 FR 41079, Oct. 5, 1989; 67 FR 62352, Oct. 7, 2002]

#### **§31.7 Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants.**

(a) Each person registered as a leverage transaction merchant or who files an application for registration as a leverage transaction merchant, who knows or should have known that its adjusted net capital at any time is less than the minimum required by §31.9, or that its cover at any time is less than the minimum required by §31.8, or that the amount of leverage customer funds in segregation is less than is required by §31.12 or by the capital, cover or

segregation rules of any designated self-regulatory organization to which such person is subject, if any, must:

(1) Give telegraphic notice as set forth in §1.12(g) of this chapter that such applicant's or registrant's adjusted net capital is less than is required by §31.9, or its cover is less than is required by §31.8, or the amount of leverage customer funds in segregation is less than is required by §31.12 or by such other capital, cover or segregation rule, identifying the applicable capital, cover or segregation rule. This notice must be given within 24 hours after such applicant or registrant knows or should have known that its adjusted net capital or its cover or the amount of leverage customer funds in segregation is less than is required by any of the aforesaid rules to which such applicant or registrant is subject; and

(2) Within 24 hours after giving such notice file a statement of financial condition, a statement of the computation of the minimum capital requirements pursuant to §31.9 (computed in accordance with the applicable capital rule), a schedule of coverage requirements and coverage provided, and a schedule of segregation requirements and funds on deposit in segregation, all as of the date such applicant's or registrant's adjusted net capital or its cover or the amount of leverage customer funds in segregation became less than the minimum required.

(b) Each person registered as a leverage transaction merchant, or who files an application for registration as a leverage transaction merchant, who knows or should have known that its adjusted net capital at any time is less than 120 percent of the amount required by §31.9 must file written notice to that effect as set forth in §1.12(g) of this chapter within five business days of such event. Such applicant or registrant must also file a Form 2-FR or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three successive months have elapsed