

§ 31.7

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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

during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b). Each financial report required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

(c) The requirements of §§1.12(c), 1.12(d), 1.12(e) and 1.12(g) of this chapter shall apply to registered leverage transaction merchants and to persons who have applied for registration as leverage transaction merchants, as if in those paragraphs the term "leverage transaction merchant or applicant therefor" were substituted for the phrase "applicant or registrant."

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

[49 FR 5530, Feb. 13, 1984, as amended at 50 FR 28, Jan. 2, 1985; 54 FR 41079, Oct. 5, 1989]

§ 31.8 Cover of leverage contracts.

(a)(1) Each leverage transaction merchant must at all times maintain cover of at least 90 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers, and must at all times also maintain cover of at least 90 percent of the amount of physical commodities subject to open short leverage contracts entered into with leverage customers. At least 25 percent of the amount of physical commodities subject to open long leverage contracts must be covered by the types of permissible cover set forth in paragraphs (a)(2) (i) and (ii) of this section.

(2) Permissible cover for a long leverage contract is limited to:

(i) Warehouse receipts for the leverage commodity subject to the leverage contract held in commercial banks located in the United States or in approved contract market depositories: *Provided*, That the balance of the principal and accrued interest on any loan against such warehouse receipts does not exceed 70 percent of the current market value of the commodity represented by each receipt.

(ii) Warehouse receipts for gold bullion in the case of leverage contracts on bulk gold coins, bulk gold coins in the case of leverage contracts on gold

bullion, silver bullion in the case of leverage contracts on bulk silver coins, bulk silver coins in the case of leverage contracts on silver bullion, one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under §31.6 of this part, and one type of bulk silver coins for leverage contracts involving another type of bulk silver coins on an ounce-for-ounce basis if each type of bulk silver coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under §31.6 of this part, which are held in commercial banks located in the United States or in approved contract market depositories: *Provided*, That the balance of the principal and accrued interest on any loans against such warehouse receipts does not exceed 70 percent of the current market value of the commodity for which it represents cover.

(iii) Purchase, in physical form, of the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, with settlement within two business days shall be considered permissible cover from the time the purchase order is confirmed, even though the leverage transaction merchant does not have possession or control of a warehouse receipt until settlement: *Provided, however*, That such purchases are not made from an affiliated firm, and such purchases at no time constitute more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers: *And, provided further*, That the leverage transaction merchant maintains, in accordance with §31.14 of this part, detailed records of these transactions which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

(iv) A long spot futures contract on the leverage commodity subject to the