

Commodity Futures Trading Commission

§ 31.5

(5) Delivery of the leverage commodity after satisfaction of the balance due on the contract; and

(6) Determination of the contract purchase and repurchase, or sale and resale prices by the leverage transaction merchant; and

(x) *Leverage transaction* means the purchase or sale of any leverage contract, the repurchase or resale of any leverage contract, the delivery of the leverage commodity, or the liquidation or rescission of any such leverage contract by or to the leverage transaction merchant.

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

[49 FR 5527, Feb. 13, 1984, as amended at 49 FR 25428, June 21, 1984; 50 FR 26, Jan. 2, 1985; 50 FR 36414, Sept. 6, 1985; 54 FR 41078, Oct. 5, 1989]

§ 31.5 Unlawful conduct.

(a) On and after April 13, 1984, it shall be unlawful for any person:

(1) 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;

(2) Except as provided in paragraph (a)(3) of this section, 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 that person is registered with the Commission in accordance with § 31.7 of this chapter and that registration has not expired, been suspended (and the period of suspension has not expired) or been revoked; or

(3) Except as provided in paragraph (a)(2) of this section, if such person is a natural person, to offer to enter into, enter into or confirm the execution of a leverage contract to or with a lever-

age 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 § 31.8 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 § 31.8 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,

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.