



Notice I-07-38

September 24, 2007

Regulatory Reminder: Associated Persons Registration Requirements

Over the last few years, NFA has found during examinations that certain individuals employed by Member firms should be registered as associated persons ("APs"), but are not. These individuals are either employed in a capacity that involves the solicitation or acceptance of customer orders or in the supervision of other persons so engaged. Additionally, these individuals may be listed principals of these Member firms either due to an ownership interest in the firm or by virtue of their title at the firm. For example, in a recent Member Responsibility Action, *In re Renaissance Asset Management*, a listed principal with the title "Chief Executive Officer" was not also registered as an AP despite the fact that he was in the firm's supervisory chain over another AP and involved in the solicitation and acceptance of customer orders.

Due to these recurrent examination findings and because NFA often receives questions from Members and those applying for membership relating to which persons in a Member organization must register as APs, NFA believes that this regulatory reminder is warranted. Member firms in reviewing AP registration issues should be mindful of Sections 4k(1) through (3) of the Commodity Exchange Act ("Act") and a 1980 Interpretive Statement issued by the Commodity Futures Trading Commission ("Commission").

Sections 4k(1) through (3) of the Act provide that an individual must be registered as an AP when acting in a capacity that involves the solicitation or acceptance of customer orders or "the supervision of any person or persons so engaged." The Commission's *Interpretative Statement Regarding the Scope of the Term "Supervision" in the Associated Person Registration Requirement* indicated that "all persons, regardless of position title, who supervise associated persons must register" as APs. The Commission further provided that not only must immediate supervisors register as APs, but everyone in the "line of supervisory authority," regardless of how senior their position, including the president of the firm, must register as APs. The Interpretive Statement appears below in its entirety.

When determining whether a person must register as an AP due to supervisory responsibilities it is not enough to simply consider the person's title or lack of title. A Member must look to see whether that individual supervises APs and whether the individual is in the "line of supervisory authority" over APs. If a person is in a line of supervisory authority over APs, then this individual must also be registered as an AP no matter how high up the person is or how far down the soliciting APs are in the Member's organizational chart. If a person is required to be registered as an AP, being listed as a principal of a Member is not sufficient. The person must also file with NFA an application for AP registration.

In authorizing NFA to perform the registration functions on its behalf, the Commission requires NFA to do so in accordance with the Act, Commission regulations, and guidance and interpretations issued thereto. The Commission has also specifically prohibited NFA from accepting or acting upon any request for exemption from registration or from rendering no-action opinions with respect to the applicable registration requirements. See 48 Fed. Reg. 35158 (Aug. 3, 1983) and 49 Fed. Reg. 39593 (Oct. 9, 1984). Any such requests should be directed to the Commission.

If you have any questions regarding this reminder or registration requirements generally, please contact Michael J. Crowley, Associate General Counsel, at (312) 781-1388 or mcrowley@nfa.futures.org.

Interpretative Statement Regarding The Scope of the Term "Supervision" in the Associated Person Registration Requirement.

[1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ? 21,069 (Commodity Futures Trading Commission,

August 14, 1980).

Section 4k(1) of the Commodity Exchange Act, 7 U.S.C. 6k(1) (1976), states in pertinent part:

It shall be unlawful for any person to be associated with any futures commission merchant or with any agent of a futures commission merchant as a partner, officer, or employee (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the *supervision of any person or persons so engaged*, unless such person shall have registered, under this Act, with the Commission.. (Emphasis added.)

The Commission has received inquiries concerning the scope of the associated person registration requirement as it applies to those individuals who supervise other associated persons on behalf of a futures commission merchant or its agent. The Commission believes that the registration requirement under Section 4k includes all those individuals in the line of supervisory authority over the associated persons who solicit and accept customers' orders.*

Section 4k was enacted as part of the Commodity Futures Trading Commission Act of 1974. The House Report on that Act provides some indication of Congressional intent with respect to the breadth of the registration requirement. That report states that Section 4k would "extend the requirements for registration to any person associated with a futures commission merchant or with any agent of a futures commission merchant in any capacity which involves ... the supervision of persons" engaged in the solicitation or acceptance of customers' orders. H.R. REP. No. 93-975, 93d Cong., 2d Sess. 65 (1974).

Because of the organizational diversity of futures commission merchants and of their agents, it is not possible to provide specific guidance as to what positions at a given firm would require registration. It should be emphasized, however, that all persons, regardless of position title, who supervise associated persons must register. Since this requirement, as mentioned above, applies to all individuals in the line of supervisory authority, it includes positions up through that of the firm's chief operating officer. Thus, for example, depending upon the organization of each firm, the supervisors required to register might be the branch office manager and designated supervisor, district manager, vice-president in charge of commodity sales, vice-president in charge of the commodity department, the executive vice-president to whom these persons report, and the president of the firm.

In publishing this notice regarding those supervisors required to be registered under Section 4k, the Commission wishes to emphasize that it intends to enforce that Section in accordance with this Interpretation.

Accordingly, any person failing to comply with this Interpretation will be subject to appropriate Commission action.

*In connection with the initial organization of the Commission, staff reports were prepared concerning the proper implementation of the Act, and one such report (Report for the Commodity Futures Trading Commission. *Questions Respecting the Registration of Associated Persons*, Project No. 204 (1975)) specifically discussed the interpretation of Section 4k as it relates to supervisory personnel.

The Report stated that three approaches could be taken. First, the Commission could view the term "supervision" narrowly, as applying only to the immediate supervisor of the employee who is engaged in the solicitation or acceptance of customers' orders. Second, the Commission could construe the term to include not only the immediate supervisors and those in the supervisory "chain-of-command" but also to include anyone who has policy-making responsibility with respect to these activities or who supervises persons with such responsibility. The third approach would be to include not only the immediate supervisors, but also all those persons in the supervisory "chain-of-command" of a futures commission merchant or its agent. It is this third approach which the Report recommended and which the Commission has followed and concerning which it is now giving the public general notice.

While this Interpretation deals with the question of who must register under Section 4k(1)(ii) of the Act, Commission rule 166.3, 17 CFR 166.3 (1979), concerns the scope of the supervisory obligations of registrants other than non-supervisory associated persons and, of course, would apply to those who must register under

Section 4k(1)(ii) in accordance with this Interpretation.

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