

Public Report on the Registration Program of the National Futures Association

June 2010



**Division of Clearing and
Intermediary Oversight**

Public Report by the Division of Clearing and Intermediary Oversight on the Registration Program of the National Futures Association

Executive Summary

Background: Congress, through the Commodity Exchange Act (“CEA”), has required intermediaries to register with the Commodity Futures Trading Commission (“CFTC” or “Commission”) in order to ensure that (i) futures industry professionals meet minimum standards of fitness and competency, and (ii) the Commission and members of the public have a means of addressing wrongful conduct by industry professionals. In 1983, the Commission began a series of delegations to the National Futures Association (“NFA”) regarding the registration of intermediaries. Over the course of the last 27 years, the Commission’s delegations have assigned nearly the entirety of registration and fitness examination activities to the NFA. The Commission retains a supervisory role over NFA’s execution of these activities.

In January 2009, staff of the Division of Clearing and Intermediary Oversight (“Division”) notified NFA that the Division would be commencing a review of NFA’s Registration Program. Following document collection and review, Division staff conducted a three-day, on-site visit to NFA’s Chicago headquarters in April 2009. During this on-site visit, Division staff interviewed the supervisory staff of NFA’s Membership and Registration Department (“Registration Department”) and tested NFA’s Online Registration System (“ORS”). Following the on-site visit, Division staff collected further information and conducted further testing, as necessary, to reach the findings and develop the action items presented herein.

Findings, Recommendations and Action Items: Overall, the Division has found that NFA’s Registration Department has sufficient procedures to execute the Commission’s delegated registration and fitness functions with respect to the vast majority of registrants. However, the Division also identified certain key areas in which the Commission’s and/or NFA’s procedures must be improved.

The following is a summary of the specific findings reached by the Division in its review of NFA's Registration Program. Each finding is followed immediately by the Division's recommendations and/or the Division's prescribed action items. On March 1, 2010, Division staff met with NFA staff and presented the Division's specific findings and recommendations below. NFA staff has agreed in principle to each of the Division's recommendations, and already has taken steps to implement the recommendations for findings #4, #6 and #7.

Findings, Recommendations and Action Items

1. The Registration Department does not have a procedures manual that documents all of the procedures followed in processing registrations and withdrawals. The Registration Department uses ORS to process the majority of registrations and withdrawals, and relies extensively on the institutional knowledge of its staff for any supplemental procedures.

Recommendation: The Division recommends that NFA comprehensively document and collect all of the procedures required in processing registrations and withdrawals, including the supplemental procedures executed by Registration Department staff. Specifically, NFA needs to document the procedures of the Business Systems Group and the procedures used in NFA's manual registration processing system.

2. The Registration Department's procedures manual for the Information Center is, in various areas, incomplete, inconsistent and/or outdated. In these areas, the manual does not accurately reflect the procedures that Registration Department staff follows or the information that Registration Department staff disseminates.

Recommendation: The Division recommends that NFA update its current procedures manual for the Information Center and that NFA establish procedures to regularly review, update and correct the procedures manuals for each of the sub-groups within the Registration Department.

3. The NFA has not instituted, nor has the Commission required, any procedures for validating that firm registrants have provided their proper legal names and current addresses. Division staff has identified several entities that had registered with improper names and/or provided improper addresses.

Recommendation: The Division recommends that NFA modify the instructions to Commission Forms 7-R and 8-R to specifically instruct the applicant to state its full legal name. Form 7-R also should be revised to require that the firm provide the date of its organization in addition to the current requirement to disclose the state in which it is organized. This action will curtail the incidental use of improper names and addresses,

and provide NFA and Commission staff with sufficient information to easily verify registrants' information.

Additionally, the Division recommends that NFA search public records to verify that U.S. firms have registered using their proper legal names and current addresses. NFA has recommended that such searches be conducted upon receipt of every ORS enrollment request. Division staff and NFA will work together to design the parameters of such searches and the frequency with which such searches should be conducted after registration. Division staff and NFA staff will also consult on how these searches might be applied to non-U.S. firms in the future. This action will implement a procedural safeguard against the incidental or purposeful use of improper names and addresses.

Action Item: Division staff will periodically test the information in registration materials to ensure that Commission registrants are maintaining proper and current information. This action will ensure that Commission registration records are at all times correct and current.

4. NFA's public web-interface, the Background Affiliation Status Information Center ("BASIC"), is not programmed to display that a Commission registrant is pending withdrawal. BASIC currently displays registrants that have requested withdrawal, but that are subject to withdrawal holds, as having a current registration status, conveying the impression to the public that they are active and in good standing.

Recommendation: The Division recommends that NFA re-program BASIC to indicate that registrants subject to withdrawal holds are "pending withdrawal." Division staff has already discussed this recommendation with NFA's Legal Department and Registration Department staff. NFA is currently working to re-program BASIC so that registrants subject to withdrawal holds will be listed as "pending withdrawal."

Division staff and NFA staff will work together to craft language that will be provided in response to inquiries about a registrant's "pending withdrawal" status.

5. The Registration Department has not created any formal procedures or produced standardized forms by which a notice registration would be withdrawn. Currently, notice registrants withdraw by informal letter.

Recommendation: The Division recommends that NFA require withdrawal of notice registration by means of a standardized form. This action will formalize the notice registration withdrawal process.

6. The Division noted a number of inconsistencies on the part of both the Registration Department and the Division in the processes for confirming and revoking relief pursuant to Commission Regulation 30.10.

Action Item: Division staff has held inter-divisional meetings concerning the Commission's Part 30 program and several meetings with NFA about revising numerous aspects of the Part 30 program. Division staff has already outlined a course of action, and secured the cooperation of NFA, in remedying its various concerns about the Part 30 program.

7. There is no mechanism in place by which the Registration Department provides regular notice of changes to the procedures manual for its Investigations Group. Presently, changes in the procedures manual are addressed through the Registration Working Group ("RWG") on an ad hoc basis.¹

Recommendation: The Division recommends that NFA provide the Division, through the RWG, with NFA's quarterly updates to the procedures manual for its Investigations Group. This action will ensure that Division staff periodically reviews the procedures manual used to implement the statutory disqualification provisions of the CEA.

8. The Division staff identified two instances in which NFA Compliance Department staff did not provide timely notice of a withdrawal hold to Registration Department staff. Registration Department staff was required to reinstate the registrations of these two firm registrants and then place them on withdrawal hold. The failure of NFA's Compliance Department to timely request withdrawal holds raises concern regarding NFA's inter-departmental communications.

Recommendation: The Division recommends that NFA improve the timeliness of communications between its Compliance Department and its Registration Department. NFA has agreed to review its processes for communicating withdrawal holds and to make improvements where deficiencies are identified.

9. In 2003, the Registration Department was denied access to the Financial Industry Regulatory Authority ("FINRA") Criminal History Record Information ("CHRI") database. Consequently, NFA must conduct independent background searches to discover information contained within FINRA's CHRI database.

Action Item: Division staff will seek to minimize and potentially eliminate duplicative efforts by domestic financial regulatory agencies, furthering the current Administration's goals of regulatory harmonization.

¹ The RWG is a group of Commission staff and NFA staff that meet to discuss registration issues.

Table of Contents

Executive Summary	i
I. Introduction, Legal History and Objectives	1
A. Introduction	1
B. Legal History	2
C. Objectives	4
II. NFA’s Organization and Staffing	6
A. NFA’s Membership and Registration Department	6
B. Findings from Division Staff’s On-Site Visit	9
III. Registration Application Processing	10
A. Overview of NFA’s Online Registration System	10
B. ORS Registration Application Processing	11
C. NFA’s Manual Registration Processing System.....	17
D. Foreign Firms and Part 30	21
E. Registration Processing Procedures	24
F. The Division’s Testing	27
IV. Fitness Processing	28
A. General Overview	28
B. Investigations Group Procedures Manual	31
C. The Division’s Testing	33
V. Temporary Licenses and Conditioned Registrants	37
A. General Overview	37
B. Temporarily Licensed and Conditioned Registrant Procedures	41
VI. Registration Maintenance	41
A. General Overview	41
B. Registration Maintenance Procedures and Testing.....	42
VII. Withdrawal from Registration	42
A. Withdrawal through ORS	43
B. Withdrawal through NFA’s Manual Registration System	44
C. Registration Withdrawal Procedures	45

D. Division Staff’s Testing.....	45
VIII. Registration Recordkeeping	45
A. The Records Center.....	46
B. The Document Research Group	47
IX. Information Center	50
A. General Overview	50
B. The Information Center’s Procedures Manual.....	50
C. Division Staff’s Testing.....	52
X. Conclusion, Corrective Action and Recommendations	54
A. Conclusion	54
B. Findings, Recommendations and Action Items	54
Attachments	A-1
Attachment 1 – Abbreviated History of the Commission’s Delegations	A-1
Attachment 2 – ORS Security Manager Designation Process	A-5

I. Introduction, Legal History and Objectives

A. Introduction

The registration of intermediaries serves two critically important functions. First, registration allows the Commission to ensure that all futures industry professionals who deal with the public meet minimum standards of fitness and competency.² The fitness investigations that are part of the registration process permit the Commission to search through FBI databases and other sources to uncover past misconduct that may disqualify an individual or entity from registration.³ The proficiency examinations that are a prerequisite to registration help ensure that futures industry professionals are equipped with a minimum level of industry knowledge.⁴

Second, registration provides the Commission and members of the public with a clear means of addressing wrongful conduct by futures industry professionals. With respect to a registered entity, the Commission has clear authority to take punitive and/or remedial action for violations of the CEA or of the Commission's regulations.⁵ Furthermore, the Commission has the ability to deny or revoke a registration, thereby expelling a person or an entity from serving as an intermediary in the industry. Members of the public also may access the Commission's Reparations Program in seeking redress for wrongful conduct by a Commission registrant.⁶

In sum, the CEA and the Commission's registration requirements further critical regulatory objectives and serve important public policy goals. When implemented properly, registration procedures upgrade the overall quality of Commission registrants.

B. Legal History

Over the course of the last 27 years, the Commission has, through a series of delegation orders, assigned nearly the entirety of its registration and fitness examination

² H.R. REP. NO. 97-565(I), at 48 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3897–3899.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

activities to the NFA.⁷ The Commission's delegations began in August 1983, when the Commission delegated to NFA the authority to register introducing brokers ("IBs") and their associated persons ("APs").⁸ Approximately 14 months later, the Commission delegated the registration of futures commission merchants ("FCMs"), commodity pool operators ("CPOs"), commodity trading advisors ("CTAs") and their APs to NFA as well.⁹ In 1989, the Commission issued final rules delegating the registration of leverage transaction merchants ("LTMs") and their APs to NFA.¹⁰ The registration of floor brokers ("FBs") and floor traders ("FTs") was delegated to NFA in 1986¹¹ and in 1993,¹² respectively. The registration of agricultural trade option merchants ("ATOMs") and their APs was delegated to NFA in 1998.¹³

In addition to the delegation of registration functions, the Commission delegated to NFA the authority to process withdrawals of registrants through a series of delegations beginning in 1988 and ending in 1993.¹⁴ Similarly, the Commission delegated the power to deny, suspend, or revoke the registration of FCMs, IBs, CPOs, CTAs, agricultural trade option merchants ("ATOMs"), and their respective APs, as well as that of FBs and FTs, to NFA between 1985 and 1998.¹⁵ Concurrent with these delegations, the Commission also delegated to NFA the ability to grant temporary

⁷ An abbreviated history of the Commission's delegations is attached to this report as Attachment 1.

⁸ 48 Fed. Reg. 35,158 (Aug. 3, 1983).

⁹ 49 Fed. Reg. 39,593 (Oct. 9, 1984).

¹⁰ 54 Fed. Reg. 19,556 (May 3, 1989).

¹¹ 51 Fed. Reg. 34,490 (Sept. 29, 1986).

¹² 58 Fed. Reg. 19,657 (Apr. 15, 1993).

¹³ 63 Fed. Reg. 18,821 (Apr. 16, 1998).

¹⁴ 53 Fed. Reg. 8,428 (Mar. 15, 1988) (authorizing NFA to process withdrawals of FCMs, IBs, CPOs, and CTAs); 54 Fed. Reg. 41,068, 41,113 (Oct. 5, 1989) (permitting NFA to process withdrawals of LTMs); 57 Fed. Reg. 23,136 (June 2, 1992) (granting authority to NFA regarding the withdrawal of FBs); 58 Fed. Reg. 19,575 (Apr. 15, 1993) (delegating authority to NFA regarding the withdrawal of FTs).

¹⁵ 50 Fed. Reg. 34,885 (Aug. 28, 1985) (delegating with respect to FCMs, IBs, CPOs, CTAs, and APs thereof); 59 Fed. Reg. 38,957 (Aug. 1, 1994) (delegating with respect to FBs and FTs, but still requiring NFA to refer certain FB and FT registration actions to the Commission for determination); 62 Fed. Reg. 36,050 (July 3, 1997) (providing a full delegation of the authority to deny, suspend or revoke the registration of FBs and FTs); 63 Fed. Reg. 63, 913 (Nov. 17, 1998) (delegating with respect to ATOMs and APs thereof).

licenses to APs of FCMs, IBs, CPOs, and CTAs,¹⁶ and to grant temporary licenses to guaranteed IBs.¹⁷

Between 1997 and 2005, the Commission delegated to NFA the authority to confirm and, where necessary, revoke relief provided to foreign firms acting as FCMs by soliciting and accepting funds from U.S. domiciled persons to trade futures contracts and options on futures contracts executed on a foreign board of trade pursuant to Regulation 30.10. The Commission also delegated to NFA the responsibility to perform fitness checks with respect to such foreign firms.¹⁸ The Commission also delegated to NFA the authority to: (i) receive filings from foreign IBs, CPOs and CTAs seeking exemption from registration under Commission Regulation 30.5; (ii) review petitions filed under Regulation 30.5; and, (iii) notify petitioners whether their petitions are complete or deficient.¹⁹ The Commission lastly delegated to NFA the authority to confirm relief under Regulation 30.10 for certain firms that operate through branch offices located outside of the jurisdiction where the firms are organized.²⁰

Finally, the Commission has issued guidance to NFA concerning the execution of fitness examinations.²¹ This guidance, included as Appendix A to Part 3 of the Commission's regulations, explains the circumstances under which the Commission would limit an individual's or entity's ability to register with the Commission when such applicant is subject to statutory disqualification and addresses the meaning of the phrase "other good cause" under Section 8a(3)(M) of the CEA.²²

¹⁶ 49 Fed. Reg. 8,226 (Mar. 5, 1984) (delegating authority to issue temporary licenses to APs of IBs); 49 Fed. Reg. 39, 593 (Oct. 9, 1984) (delegating authority to issue temporary licenses to APs of FCMs, CPOs, and CTAs).

¹⁷ 51 Fed. Reg. 45,759 (Dec. 22, 1986).

¹⁸ 62 Fed. Reg. 47,792 (Sept. 11, 1997) (granting NFA the authority to: (1) perform fitness checks with respect to foreign firms acting in the capacity of FCMs seeking relief under Commission Regulation 30.10; (2) receive filings from foreign firms acting in the capacities of CPOs and CTAs filing for exemption from registration under Commission Regulation 30.5; and (3) monitor compliance with both Commission Regulations); 64 Fed. Reg. 30,489 (June 8, 1999) (granting NFA the authority to: (1) revoke, after 30 days written notice, the confirmation of relief under Commission Regulation 30.10 for any firm that does not maintain a valid agreement with an agent for service of process in the United States in accordance with Commission Regulation 30.5; (2) revoke, after consultation with the Division, the confirmation of any relief under Commission Regulation 30.10 for any firm that fails to comply with the terms and conditions on which relief was confirmed; and (3) withdraw the confirmation of relief under Commission Regulation 30.10 from any firm that notifies NFA of its decision to forfeit such relief or cease business operations).

¹⁹ 64 Fed. Reg. 28, 910 (May 28, 1999).

²⁰ *Id.*

²¹ 17 C.F.R. pt. 3 app. A (2009).

²² *Id.* 7 U.S.C. §12a(3)(M).

C. Objectives

The Division's objective in reviewing NFA's Registration Program is to ensure that NFA has sufficient procedures to execute the registration activities that the Commission delegated to NFA, and that NFA's procedures further the above-stated critical regulatory objectives and important public policy goals of registration. Reviews and oversight of NFA's Registration Program are essential in identifying whether the Commission's regulations are effective, and whether they are being properly implemented.²³

To assess NFA's Registration Program, Division staff measured NFA's procedures and performance against 10 primary objectives extracted from the Commission's delegation orders:

1. NFA must process and grant registration applications for FCMs, IBs, CPOs, and CTAs, as well as APs of the foregoing, in conformity with the requirements of Part 3 of Commission regulations, accepting all filings required thereby for registration.²⁴ NFA must also grant and terminate temporary licenses for APs and guaranteed IBs, where appropriate.
2. NFA must process and grant notice registration requests for qualifying FCMs and IBs in conformity with the requirements of Part 3 of Commission regulations, accepting all filings required thereby for registration. NFA must also terminate each such filing where the qualifying criteria are no longer met.
3. NFA must process and grant registration applications for FBs and FTs in conformity with the requirements of Part 3 of Commission regulations. NFA must also grant and terminate temporary licenses where appropriate.
4. NFA must review all requests for confirmation of relief pursuant to Regulation 30.5, and NFA must notify the foreign firm or individual when its request is complete or deficient. NFA must also review requests for relief pursuant to orders granted by the Commission under regulation 30.10, and NFA must conduct fitness checks with respect to such firms. Additionally, NFA must

²³ The Division's last formal review of NFA's Registration Program occurred in 1996. Since that time, Division staff has addressed registration-related issues with NFA staff primarily through the RWG. Given the recent growth of the Commission's resources, Division staff anticipates conducting reviews of various NFA compliance programs on an annual basis. Such annual reviews of NFA will result in more frequent reviews of the Registration Program than were conducted in previous years.

²⁴ It should be noted that the Division's review of NFA's Registration Program did not test NFA's procedures regarding Part 4 exemption notices. In 2006, Division staff completed a formal review of NFA's CPO and CTA Compliance Program. That review did test, and found no issues with, NFA's procedures for processing Part 4 exemption notices.

consult with the Commission concerning any issues of non-compliance of which NFA has become aware.

5. NFA must process and grant withdrawal requests for FCMs, IBs, CPOs, CTAs, LTMs, ATOMs, APs and principals of each of the foregoing, FBs, and FTs in conformity with the requirements of Part 3 of Commission regulations.
6. NFA must deny, condition, suspend, restrict or revoke the registration of any FCM, IB, CPO, CTA, ATOM, any AP of any of the foregoing, or any FB or FT who may be subject to statutory disqualification under Sections 8a(2) through 8a(4) of the CEA. NFA also must maintain a system to track fitness investigations and adverse action proceedings, and periodically provide to the Commission reports on such fitness investigations and adverse action proceedings.
7. NFA must maintain a system of records relating to the delegated Commission registration functions and serve as the official custodian of all Commission registration records filed with NFA. NFA must also preserve the Commission's registration records in a secure manner at a location in accordance with procedures acceptable to the National Archives and Records Administration and to the Commission.
8. NFA must make available for inspection and copying, upon reasonable request by third parties, the following information contained in the public portions of the Commission's records: (i) registration status of any applicant; and (ii) publicly available portions of registration forms, including financial information forms required to be filed with initial registration applications.
9. NFA must keep adequate and readily accessible records and related statistics, in accordance with reasonable procedures acceptable to the Commission, of (i) the types of disclosures of non-public information that have been made, (ii) the requesters thereof, (iii) the date of the disclosures, and (iv) any required release authorizations. NFA must safeguard the confidentiality of the records.
10. NFA must provide access to the Commission's records for official purposes in accordance with reasonable procedures acceptable to the Commission, and keep the Commission's registration records readily accessible unless the filing person has been inactive for all purposes for three years.

II. NFA's Organization and Staffing

A. NFA's Membership and Registration Department

The Registration Department is responsible for implementing, executing, and supervising NFA's registration and fitness processing programs, as well as NFA's attendant functions as the Commission's records custodian. The organization and structure of the Registration Department has changed considerably since the Division's last review. At the time of the last review, NFA's Registration Department was composed of 38 employees who were divided into three sub-groups: the Registration Processing Unit, the Registration Investigations Unit, and the Information and Record Center. Based on the findings in the Division's last review, a good deal of the Registration Department's staff time previously was devoted to manual data entry and review. At that time, NFA was only just beginning to develop a "Direct Entry Program," which allowed certain categories of applicants to submit their registration applications via computer interface. At the time of the last review, the NFA's Direct Entry Program had only 46 participants out of more than 3,700 registered firms.

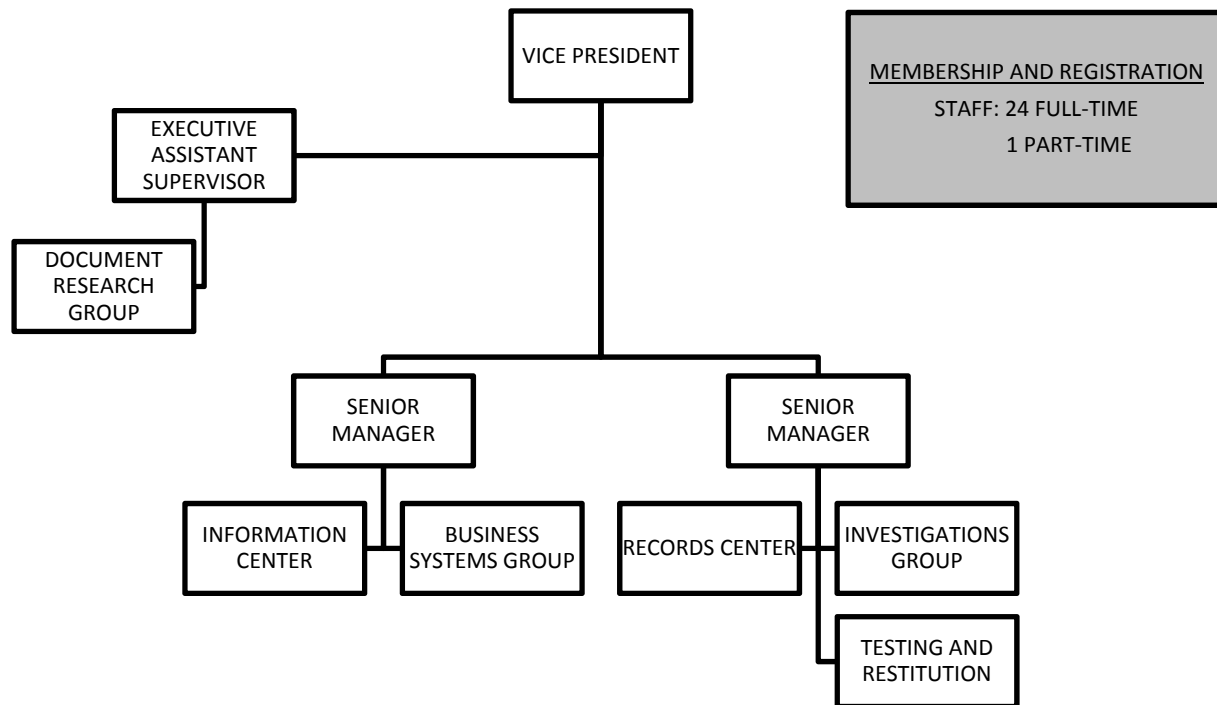
This review finds that NFA's Registration Department is now far more reliant on technology. The Registration Department currently relies upon ORS to process the registration-related filings of over 99.3% of all Commission registrants, and there is only limited need for data entry by NFA staff.²⁵ Consequently, the Registration Department now has only 25 employees total (24 full-time and one part-time) – a 34% reduction in staff since the Division's last review.

Along with staff reductions, the Registration Department has also been reorganized since the last review. The Department is headed by a vice president; reporting to the vice president are two senior managers and an executive assistant supervisor who together oversee six different sub-groups. One senior manager supervises two sub-groups: the Information Center and the Business Systems Group. The other senior manager supervises three sub-groups: the Records Center, the Investigations Group, and the Testing and Restitution Group. The executive assistant

²⁵ As of October 2009, ORS was used to process the filings of approximately 85,822 registered firms and individuals out of a total of approximately 86,431.

supervisor oversees the final sub-group, the Document Research Group. This structure is depicted in Exhibit 1, below. The entire staff of the Registration Department is located in NFA’s Chicago Headquarters office.

EXHIBIT 1: ORGANIZATIONAL STRUCTURE OF NFA’S MEMBERSHIP AND REGISTRATION DEPARTMENT



Business Systems Group

The Business Systems Group (“BSG”) handles a diverse group of registration-related responsibilities, including, but not limited to: (i) approving ORS enrollments for applicants, registrants, and security managers; (ii) processing registration applications within NFA’s manual registration processing system; (iii) assisting walk-in registration applicants with the NFA’s kiosk service registration;²⁶ (iv) providing fingerprinting services for walk-in registration applicants; (v) generating various internal reports from ORS; (vi) maintaining ORS and developing and testing enhancements to ORS; and (vii)

²⁶ NFA operates a kiosk registration service at its Chicago Headquarters, which allows prospective registrants, on a “walk-in” basis, to use a dedicated NFA computer terminal to complete and submit their registration application materials through ORS. The kiosk service also allows applicants, with the assistance of a BSG or IG staff member, to complete and submit fingerprint cards.

maintaining registration-related content on the NFA's website. The BSG is staffed by four full-time employees, excluding the Group's senior manager.

Testing and Restitution

The Testing and Restitution Group ("TRG") is responsible for matching results from NFA's proficiency testing program with individual applicants' registration applications.²⁷ The TRG is staffed by one full-time employee, excluding the senior manager.

Investigations Group

The Investigations Group ("IG") initially reviews the fitness-related disclosures in application materials and processes applicants' fingerprint cards with the FBI. Where necessary, the staff of the IG will escalate potentially actionable fitness matters to the Group's supervisor or to NFA's Registration, Compliance and Legal Committee ("RCL Committee"). As discussed in Section IV, the RCL Committee determines whether a registration proceeding is required for a given fitness-related matter. The registration proceeding determines whether the firm's or individual's registration should be denied, conditioned, suspended, restricted or revoked. The IG also scans applicants' fingerprint cards into Crossmatch and provides fingerprinting services for walk-in registration applicants.²⁸ The IG is staffed by seven full-time employees, excluding the senior manager.

Information Center

The Information Center ("IC") is the sub-group of the Registration Department that is tasked with responding to telephone and/or email inquiries from NFA membership and the general public. As such, the IC serves as the primary human interface between NFA and firms and/or individuals with questions about registration. The IC is staffed by five full-time employees.

Records Center

The Records Center is the sub-group of the Registration Department responsible for maintaining the Commission's registration-related files. Attendant to this

²⁷ The TRG is also tasked with handling certain functions of NFA's restitution program; however, those functions fall outside the scope of this report.

²⁸ Crossmatch Technologies, Inc., is a non-governmental corporation that provides government and commercial customers with fingerprint scanning technology.

responsibility, the Records Center operates NFA's Registration File Tracking System, which allows NFA to monitor the location of any on-site or off-site hard copy of the Commission's registration-related records. The Records Center also oversees NFA's Registration Image System, which allows NFA to scan and image new registration records.

Records Center technicians also occasionally assist the IG by fingerprinting applicants and/or scanning applicants' fingerprint cards into Crossmatch. The Records Center is staffed by two full-time employees, excluding the senior manager.

Document Research Group

The Document Research Group ("DRG") is the subgroup of the Registration Department responsible for processing and responding to requests for access to the Commission's records for which NFA serves as official custodian, including registration-related records. The DRG is staffed by two full-time employees, excluding the executive assistant supervisor.

B. Findings from Division Staff's On-Site Visit

The Division finds the overall organization and structure of NFA's Registration Department was sufficient to execute the Commission's registration functions that have been delegated to NFA.

However, the Registration Department tends to concentrate responsibility in a small number of staff members and to depend heavily on these staff members' institutional knowledge in executing certain registration processing procedures. For example, the majority of the BSG's activities are undocumented because they are conducted by three individuals, who has been with NFA for over two decades. This reliance on key persons' institutional knowledge, coupled with the sparseness of the Registration Department's documented procedures in areas like the BSG, interjects an unnecessary level of key person risk to the Registration Department.

III. Registration Application Processing

NFA administers the Commission's registration and fitness processing functions for all FCMs, IBs, CPOs, CTAs, ATOMs, LTMs, APs and principals of each of the foregoing, FBs, FTs, and securities brokers or dealers that are notice registered with the Commission as FCMs or IBs for the sole purpose of conducting securities futures transactions. All registration applications for the aforementioned registration categories must be processed either through ORS or through NFA's manual registration processing system, depending on the particular registration category.

A. Overview of NFA's Online Registration System

ORS is a web-based registration filing and processing system designed to handle the registration-related filings of the vast majority of firms and individuals either registered with or applying for registration with the Commission.²⁹ Presently, the following registration categories are required to file their registration materials through ORS: FCMs, IBs, CPOs, CTAs, APs and principals of each of the foregoing, FBs, and FTs. NFA no longer accepts hard copy applications for any of these registration categories.

Applicants and registrants access ORS through NFA's website, www.nfa.futures.org. NFA requires that applicants and registrants complete and submit an ORS enrollment form and receive a username and password from NFA before accessing ORS.³⁰ Once a username and password have been received, ORS will be available to enrolled users from Monday through Friday, 23 hours per day (ORS is unavailable between 9:00 p.m. and 10:00 p.m. (Eastern)). As with any web-based system, ORS occasionally may be unavailable when system maintenance is required. However, the Division has noted that in the event that scheduled system maintenance is

²⁹ *Supra* at note 25.

³⁰ A description of the ORS process for designating a security manager is attached to this report as Attachment 2.

required, NFA generally provides clear, advance notice of the times during which ORS will be unavailable, and a brief description of why ORS will be unavailable.³¹

ORS requires only that users operate a currently supported version of Microsoft's Internet Explorer or Mozilla's Firefox internet browsers. The data that is stored on ORS is secured by the use of 128 bit Secure Sockets Layer encryption. NFA also offers an electronic file transfer ("Web EFT") application that allows applicants and registrants to transfer limited information concerning their APs, principals and applicants from certain securities-related filings through ORS or a secured file transfer protocol.³² NFA's Web EFT application processes all files nightly, and results can be verified by the applicant or registrant the next morning in ORS.

From October 1, 2007 through September 30, 2008, 231 applicants used NFA's kiosk service to complete and submit their registration materials and 1107 used NFA's kiosk service for fingerprinting services only.³³ NFA staff indicated that the majority of applicants using the kiosk service are applying for registration as FBs or FTs.

B. ORS Registration Application Processing

The process of applying for registration through ORS can be divided into three steps: (1) ORS enrollment; (2) registration application; and (3) registration processing.

1. ORS Enrollment

Enrollment in ORS is the first step for any firm seeking to register as an FCM, IB, CPO, and/or CTA, or for any individual seeking to register as an FB or FT. ORS

³¹ For instance, the Division noted that in advance of a maintenance interruption, NFA posts a banner across the header of its online homepage reading: "Important Message: Due to system maintenance, the following systems will not be available on [Day, Date, Month, Year] at [Time] through [Day, Date, Month, Year] at [Time]: Online Registration System...We apologize for any inconvenience." NFA posted such banners during the week beginning Monday, August 24, 2009, and during the week beginning October 26, 2009.

³² Information from only the following forms can be processed using Web EFT: (a) Form U4 Amendment (residential address change), and (b) disciplinary information from the Form U5 or Form 8-T. The transferred data file must be in XML format and must conform to the FINRA's CRD Form Filing Definition standard. Because of these restrictions, the Registration Department staff concedes that Web EFT is generally only useful to a very limited group of broker-dealers ("BDs") that are also registered as FCMs. Few of those BDs, however, actually make use of Web EFT.

³³ The kiosk service averages 19 applicants/month who complete and submit their registration materials and 92 applicants/month who use fingerprint services only. For those 19 applicants that submitted their registration materials, each applicant took roughly 35 minutes to complete and submit her registration materials.

enrollment is a security measure designed to limit access to the ORS system and to protect the information contained in the applicant's registration-related filings.

Individuals seeking to register as APs or to be listed as principals of an FCM, IB, CPO, or CTA cannot enroll in ORS, even though they are required to submit their registration-related filings through ORS. NFA designed ORS this way because the Form 8-R Individual Application requires certification by the sponsoring firm prior to submission.³⁴ Because APs and principals are excluded from ORS enrollment, sponsoring firms are required to submit all Forms 8-R on behalf of their APs and principals. This procedure was incorporated to ensure that sponsoring firms are always provided with an opportunity to discharge their certification duties with respect to each Form 8-R submitted by their APs and principals.

The ORS enrollment form consists of several screens, which must be filled out in their entirety. ORS is programmed to prevent submission of an incomplete enrollment form. The enrollment form requires the designation of a security manager ("Security Manager") to serve as the key intermediary between the firm and ORS throughout the duration of the firm's or individual's registration. For FCMs, IBs, CPOs, and CTAs, the firm must nominate an individual (or several, depending on the firm's size) to serve as Security Manager(s); FBs and FTs must serve as their own Security Managers.

The Security Manager, once enrolled in ORS, has complete authority and responsibility for establishing and administering all other ORS user accounts for that registrant. Upon completion of the enrollment form, the screen will return with a temporary password. After NFA has approved the Security Manager's enrollment, NFA will send the enrollment letter containing a user name for the Security Manager. Upon receipt of the enrollment letter, the Security Manager must then log onto ORS,

³⁴ The Commission's Form 8-R Template is available online at:

<http://www.nfa.futures.org/NFA-registration/templates-and-forms/8rFormentire.pdf>.

Form 8-R is the application form that individuals are required to use to register as an associated person, a branch office manager, or a principal of a firm that is either applying for registration on a Form 7-R or already registered. The Form 8-R requires the applicant, branch manager or principal to disclose personal information, disciplinary information (criminal, regulatory, financial, employment), employment, educational and residential history, as well as provide evidence of the completion of proficiency requirements. The applicant must certify that the information in the Form 8-R is complete, accurate and not misleading; violations of such certification are subject to criminal penalties. The firm sponsoring the applicant must then also certify that, to the best of the sponsor's knowledge, the information provided in the Form 8-R is complete, accurate and not misleading, and violations of such certification are also subject to criminal penalties.

whereupon he or she will be immediately prompted to change the previously provided temporary password. After setting a new password, the Security Manager is then ready to enter ORS and begin completing his or her firm's or his or her own registration application.

2. Registration Application

To begin the registration application process, the Security Manager must log onto ORS and click on the horizontal navigation tab reading "Apply for Registration." The first screen in the "Apply for Registration" path contains two boxes, one marked "Firm" and the other marked "Individual." The Security Manager of an applicant for registration as an FCM, IB, CPO, or CTA must click on the "Process an Application" link in the box marked "Firm." For all other applicants and principals, the Security Manager must click on the "Process an Application" link in the box marked "Individual." Once on the appropriate sub-path, the Security Manager is prompted to complete electronic versions of the Commission's prescribed registration application forms.

FCMs, IBs, CPOs and CTAs

The Security Manager of an applicant for registration as an FCM, IB, CPO, or CTA completes and submits an electronic version of the Form 7-R Firm Application,³⁵ as required by Commission Regulation 3.10(a)(1).³⁶ In addition to the Form 7-R, a firm applying for registration as an FCM, IB or CPO must submit certain individualized forms, which differ depending on the applicant's designated registration category.³⁷ These individualized forms are filed separately, outside of ORS, and may be filed in either electronic or hard copy form.

³⁵ The Commission's Form 7-R Template is available online at: <http://www.nfa.futures.org/NFA-registration/templates-and-forms/Form7-R-entire.pdf>. Form 7-R is the Commission's prescribed application form for firms seeking to register with the Commission as an FCM, IB, CPO, CTA or LTM. The Form 7-R requires the applicant to disclose business information, business records location, branch office information, and disciplinary information (criminal, regulatory, financial). Form 7-R must be filed by a knowledgeable person on the applicant firm's behalf, and that person must certify that the firm's answers and information are complete, accurate and not misleading. Violations of such certification are subject to criminal penalties.

³⁶ 17 C.F.R. § 3.10(a)(1).

³⁷ FCM and IB applicants must file the Form 1-FR-FCM or 1-FR-IB, respectively, with their registration applications. 17 CFR §1.10. CPO applicants that have operated previously pursuant to the exemption from registration under Commission Regulation 4.13 must file a copy of each pool's financial statements, which must satisfy the requirements of Commission Regulation 4.22(c). 17 CFR §4.22(c).

FBs and FTs

An applicant for registration as an FB or FT (who serves as his or her own Security Manager) completes and submits an electronic version of the Form 8-R, as required by Commission Regulation 3.11(a)(1).³⁸ In addition to the Form 8-R, a designated contract market (“DCM”) or a registered derivatives transaction execution facility (“DTEF”) must indicate in ORS that the FB/FT applicant has been granted trading privileges. An applicant for registration as an FB or FT must also submit a signed fingerprint card or submit electronic fingerprints taken at NFA,³⁹ containing all ten fingerprints of the applicant. The fingerprint card or electronic fingerprints are filed separately, outside of ORS.

APs and Principals

Applicants for registration as an AP of an FCM, IB, CPO, or CTA and individuals seeking to be listed as a principal of an FCM, IB, CPO, or CTA complete and submit for certification (by their sponsoring firms) electronic versions of the Form 8-R Individual Application, as required by Commission Regulations 3.13(c) and 3.10(a)(2), respectively.⁴⁰ In addition to the Form 8-R, AP applicants and principals are required to submit two filings outside of ORS. First, AP applicants and principals must submit signed fingerprint cards,⁴¹ containing all ten fingerprints of the applicant. Second, AP applicants and principals of sole proprietorships are required to provide NFA with evidence that they have satisfied any applicable proficiency examination requirements.⁴²

³⁸ 17 C.F.R. § 3.11(a)(1).

³⁹ Form 8-R includes an attestation that the applicant is submitting a properly signed fingerprint card to NFA.

⁴⁰ 17 C.F.R. § 3.13(c); 17 C.F.R. §3.10(a)(2).

⁴¹ The required individualized forms for APs and principals may be filed either electronically (not through ORS) or in hard copy.

⁴² 7 U.S.C. § 21(p)(1) (requiring each registered futures association to “establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the provisions of the [CEA], supervisors of such persons, and all persons for which it has registration responsibilities, and a program to audit and enforce compliance with such standards”). Pursuant to this statute, NFA has enacted Registration Rule 401, which establishes the qualification testing requirements for “any individual applying to become an NFA Member as an FCM, IB, CPO, CTA or LTM, or for registration...as an AP of any of the foregoing.”

Completing and Submitting the Application

A firm's Security Manager or an individual applicant is not obligated to complete the application materials in a single visit. The "Apply for Registration" sub-path for both firms and individuals includes a link that allows applicants to "Finish an Incomplete Application." Any incomplete application for registration as an FCM, IB, CPO, CTA, AP, or for listing as a principal of any of the foregoing, or as an FB or FT can be saved in ORS, but is deleted after 90 days of inactivity.

When an application has been completed for any firm or individual (except for an AP or a principal), the applicant simply clicks a button that reads "File Application." When an application has been completely filled out by an AP or principal, he or she clicks a tab reading: "I am finished. Send my application to my sponsor." NFA incorporated this procedure to ensure that sponsoring firms are always provided with an opportunity to discharge their certification duties with respect to their APs' and principals' Forms 8-R. The sponsoring firm will receive an electronic notice that the applicant's or principal's electronic Form 8-R is ready for certification, and the sponsoring firm's Security Manager then needs to log onto ORS and certify the Form 8-R by clicking the "File Application" button. After the sponsoring firm's Security Manager has clicked "File Application" (thereby certifying the Form 8-R), the applicant or principal must herself log onto ORS and verify that all of the information contained in the Form 8-R is correct. Only after the applicant or principal clicks "File Verification" will her Form 8-R be deemed filed with NFA.

Once filed, ORS is programmed to conduct "edit checks" of each of the information fields within the electronic versions of the Forms 7-R and 8-R. The edit check ensures that the information entered conforms to an expected format (e.g., address fields must be completed). ORS is programmed to prevent submission of any application with incomplete or non-conforming information.

Fees

All firms applying for registration as an FCM, IB, CPO, or CTA are required to pay both a one-time registration fee⁴³ and an annual NFA membership fee, if

⁴³ 49 Fed. Reg. at 39,594 (granting NFA the authority to charge a fee as necessary to defray reasonable expenses incurred in processing registration applications). NFA Registration Rule 203(a) currently sets

applicable.⁴⁴ Individuals applying for registration as an FB or FT are similarly required to pay a one-time registration fee,⁴⁵ but are not subject to NFA membership fees. Individuals applying for registration as an AP of an FCM, IB, CPO or CTA or seeking to be listed as a principal of an FCM, IB, CPO, or CTA are also required to pay a one-time registration fee,⁴⁶ but not the NFA membership fee.

Registration fees may be paid to NFA online through NFA's website (via electronic check), by wire transfer, or by a check made payable to NFA. NFA also allows firm registrants and FBs or FTs to maintain prepaid accounts that can be automatically debited by ORS every time a new application is filed.

3. Registration Processing

Registration processing is carried out by two sub-groups in the Registration Department, the TRG and the IG. The registration processing functions of the TRG and the IG are discussed below:

Matching Exam Results

The TRG is responsible for matching the results from proficiency exams with the appropriate AP applicant or principal. Each business day, TRG employees download the prior day's exam results (both passes and failures) from a FINRA database. These results are uploaded every night to an internal shared drive by NFA's Information Systems Department.

ORS automatically matches the results in the shared drive against all ORS registration applications marked as "pending" or as "temporary license." Any non-exact matches that are recognized by ORS as being potential matches will produce an alert.

NFA's one-time registration fees at the following amounts: FCMs = \$500; IBs = \$200; CPOs = \$200; and CTAs = \$200.

⁴⁴ 7 U.S.C. § 21(b). NFA Registration Rule 203(a) sets the annual NFA Membership fees at the following amounts: FCMs with an Exchange as their designated self-regulatory organization = \$1,500; FCMs with NFA as their designated self-regulatory organization = \$5,625; IBs = \$750; CPOs = \$750; and CTAs = \$750. In ORS, it is possible for an applicant to fail to check the appropriate boxes to register as an NFA member and to pay its NFA membership fee. However, any such application is identified within ORS and forwarded to IC staff, who contacts the applicant to confirm that the boxes were intentionally not checked. Because NFA Bylaw 1101 generally prohibits NFA members from carrying an account, accepting an order or handling a transaction for or on behalf of any non-member of NFA that is required to be registered with the Commission as an FCM, IB, CPO, or CTA, any Commission registrant that is not an NFA member is practically prohibited from conducting any futures-related activities.

⁴⁵ *Supra* at note 44. NFA Registration Rule 203(a) currently sets NFA's one-time registration fee for an FB or an FT applicant at \$85.

⁴⁶ *Supra* at note 44. NFA Registration Rule 203(a) currently sets NFA's one-time registration fees at \$85 for an AP applicant or a firm's principal.

On average, ORS generates five potential match alerts each day. The following business day, a TRG employee attempts to reconcile the potential matches by looking to Social Security numbers or FINRA Central Registration Depository (“CRD”) numbers (akin to an NFA ID number). If no match is found, the TRG contacts the sponsoring firm and requests that the applicant’s exam results be faxed directly to NFA. As long as the applicant or principal has already taken and passed the Series 3, TRG is able to match the results.

Processing Fingerprint Cards and Disciplinary Information

The IG is responsible for processing the fingerprint cards of individual applicants and principals, and for examining the “yes” responses in the Disciplinary Information sections of Forms 7-R and 8-R to determine if an applicant or principal is statutorily disqualified from registration. The IG receives and scans all fingerprint cards from individual applicants and principals who have submitted an electronic version of the Form 8-R. The IG submits the scanned fingerprint cards to the FBI for processing, and the FBI returns a record of arrest and prosecution sheet (“RAP sheet”) for use in verifying the answers provided in the Disciplinary Information section of the individual’s Form 8-R.

ORS generates an automatic notice for IG staff for each “yes” response in the Disciplinary Information section of a submitted Form 7-R or 8-R. IG staff engages in a detailed process to determine whether a “yes” answer is patently non-actionable (thus allowing the application to be approved) or requires further investigation. Answers that require further investigation are either cleared by the Registration Investigations Manager or prepared for consideration by the RCL Committee.

If an individual’s proficiency exam results have been successfully matched by TRG, and the IG has not identified any grounds to deny, condition, suspend, restrict, or revoke the applicant’s registration, NFA is required to register the applicant or list the principal.

C. NFA’s Manual Registration Processing System

A few, low-volume registration categories are not processed through ORS. Instead, the registration-related materials for these registration categories must be filed

in hardcopy and processed through NFA's manual registration processing system. The registration categories that must use NFA's manual registration processing system are: notice registered FCMs and IBs; ATOMs and APs of ATOMs; and LTM's and APs of LTM's.⁴⁷ Together, these registration categories accounted for approximately 0.5% of all Commission registrants as of October 2009.

1. Notice Registered FCMs and IBs

Notice registration as an FCM or IB is available to firms that are registered with the Securities and Exchange Commission ("SEC") as brokers or dealers and who intend to limit their futures-related activities to transactions in security futures.⁴⁸ As of October 2009, there were only 44 active Notice IBs and 16 active Notice FCMs.

The requirements for notice registration are set forth in NFA Registration Rule 204(a)(4),⁴⁹ which requires an applicant to complete and submit a hard copy version of Notice Form 7-R with original signatures (reproductions are not accepted) to NFA.⁵⁰ No fees are required for the NFA to process these applications.

Upon receipt of the firm's registration materials, the Registration Department's executive assistant supervisor reviews the Notice Form 7-R for completeness and an original signature. The executive assistant supervisor also verifies that the firm appears in FINRA's CRD as a registered broker or dealer, and that the firm is not already registered with the Commission as an FCM or IB. If the firm's application is deficient in any of these manners, NFA generates and sends a deficiency letter to the firm. If there are no deficiencies in the firm's application, then Commission Regulation 3.10(a)(3)(ii)

⁴⁷ NFA staff explained that these registration categories were omitted from ORS because during the system's development, NFA and Division staff agreed that the cost of programming separate pathways within ORS for these low-volume registration categories outweighed the benefit to be gained by online registration filing.

⁴⁸ 17 C.F.R. § 3.10(a)(3)(i) (stating that a firm may apply for registration as a Notice FCM or Notice IB if it is registered with the SEC as a broker or dealer, and if it (A) limits its activities to security futures products, (B) has an active (not suspended) registration with the SEC, and (C) is a FINRA Member).

⁴⁹ See 17 C.F.R. § 3.10(3)(i) (stating that the NFA is responsible for specifying procedures for notice registration).

⁵⁰ The Commission's Notice Form 7-R Template is available online at:

<http://www.nfa.futures.org/NFA-registration/templates-and-forms/Notice7R.pdf>.

Notice Form 7-R is the application form that firms are required to use for notice registration as an FCM or IB. The Notice Form 7-R requires the applicant to disclose its name and business address, specify its notice registration category (FCM or IB), identify an individual to whom correspondence should be directed, and certify that the applicant satisfies the requirements for notice registration. The Notice Form 7-R is signed by the applicant's general partner or sole proprietor or by one of its officers.

dictates that the firm's notice registration must become effective upon filing, and NFA will send a letter to the firm confirming its status as a notice registrant.⁵¹

2. Limited Purpose FCMs

The Limited Purpose FCM is a registration category that was created through a series of three no-action letters issued by the Division in July 2001, July 2002 and September 2006.⁵² Registration as a Limited Purpose FCM is available to firms that are registered with the SEC as a broker or dealer and whose futures-related activities will be limited to soliciting, accepting, placing and confirming orders for the purchase and sale of "Total Return Asset Contracts" ("TRAKRS") on behalf of non-institutional customers.

Limited Purpose FCM applicants are required to file a completed Notice LP FCM Form 7-R with NFA.⁵³ NFA's manual processing procedures for Limited Purpose FCM registration applications are identical to NFA's manual processing procedures for notice registration as an FCM or IB. Pursuant to the Division's no-action relief, a firm's application for notice registration as a Limited Purpose FCM becomes effective upon filing.⁵⁴

3. ATOMs and APs of ATOMs

The ATOM is a registration category available to firms that limit their futures-related conduct to trading off-exchange agricultural trade options.⁵⁵ As of October 2009, there were no registered ATOMs.

⁵¹ 17 C.F.R. § 3.10(a)(3)(ii).

⁵² CFTC Staff Letter 02-22, (Re: "U" – Sections 4d, 4f, 4k and 4p of the Act and Parts 1, 3 and 180 – Substitution of compliance with applicable securities law regulatory requirements for compliance with various otherwise applicable requirements under the Act and Commission Rules), [2002-2003 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶28,955; CFTC Staff Letter 02-90, (Re: "Y" – Section 4f(a)(2)), [2002-2003 Transfer Binder], Comm. Fut. L. Rep., (CCH), ¶29,127; CFTC Staff Letter 06-20, [2005-2007 Transfer Binder], Comm. Fut. L. Rep., (CCH), ¶30,364. Division staff is currently reviewing the existing TRAKRS no-action position and is developing a recommendation regarding this and similarly structured products going forward.

⁵³ The Commission's Notice LP FCM Form 7-R Template is available online at: http://www.nfa.futures.org/NFA-registration/templates-and-forms/Notice7R_LPFCM.pdf.

Notice LP FCM Form 7-R requires the applicant disclose its name and address, make representations that it satisfies the conditions for notice registration as a Limited Purpose FCM, and agree to NFA Membership. The Notice LP FCM Form 7-R is signed by the applicant's general partner or sole proprietor or by one of its officers.

⁵⁴ *Supra* at note 53.

⁵⁵ 17 C.F.R. § 3.13.

NFA's manual processing procedures for ATOM registration require the firm to complete and submit an ATM Form 7-R Firm Application.⁵⁶ The firm's ATM Form 7-R must be accompanied by certified financial statements demonstrating that the firm has a minimum net worth of \$50,000.⁵⁷ Additionally, each ATOM applicant must file an ATM Form 8-R Individual Application⁵⁸ for each of its principals and APs.⁵⁹ Firms applying for registration as ATOMs are also required to pay a one-time application fee.⁶⁰ ATOMs are not required to be NFA members and therefore do not pay an NFA membership fee.

Upon receipt of the applicant firm's documents, NFA first reviews the ATM Forms 7-R and/or 8-R for completeness, ensuring all required disclosures have been made. If any form is incomplete, NFA generates and sends a deficiency letter to the applicant firm, identifying the incomplete application form(s). If any form contains an affirmative response to any disciplinary question, the application is directed to the IG for a fitness investigation. NFA's Compliance Department reviews the firm's certified financial statements. If all requirements have been satisfied, NFA registers the firm as an ATOM and approves the firm's principals and APs.

Registration as an ATOM is a rare occurrence (only two firms have ever registered as ATOMs). Because ATOMs are not required to be NFA members and therefore are not subject to oversight by NFA in its capacity as a designated self-regulatory organization ("DSRO"), the Registration Department's vice president stated

⁵⁶ 17 C.F.R. § 3.13(e) (stating that ATOMs and their APs "must apply for registration on the appropriate forms specified by the National Futures Association and approved by the Commission..."). ATM Form 7-R Template is available online at:

http://www.nfa.futures.org/NFA-registration/templates-and-forms/form7-r_ATM.pdf.

ATM Form 7-R is the application form that firms are required to use for notice registration as an ATOM. The ATM Form 7-R requires the applicant to disclose its name and business address; the location of its business records; the form of organization and its jurisdiction a contact for inquiries; and the name, social security number and date of birth of every individual controlling or directing the offer or sale of trade options or associated trade activity by the ATOM.

⁵⁷ 17 C.F.R. § 3.13(d)(1)(i); 17 C.F.R. § 3.13 (e)(2).

⁵⁸ The Commission's ATM Form 8-R Template is available online at:

<http://www.nfa.futures.org/NFA-registration/templates-and-forms/atm8-r.HTML>.

ATM Form 8-R is the application form that is required to use for notice registration as an AP of an ATOM or as a principal of an ATOM. The ATM Form 8-R requires the applicant or principal to disclose personal information and disciplinary information (criminal, regulatory, financial, employment). The applicant must certify that the information in the Form 8-R is complete, accurate and not misleading, and violations of such certification are subject to criminal penalties. The firm sponsoring the applicant must then also certify that, to the best of the sponsor's knowledge, the information provided in the Form 8-R is complete, accurate and not misleading, and violations of such certification are also subject to criminal penalties.

⁵⁹ 17 C.F.R. § 3.13(e).

⁶⁰ *Supra* at note 44. The one-time registration fee for an ATOM application is currently set at \$200.

that NFA would directly contact Division staff in the event an application for registration as an ATOM is submitted.

4. LTMs and APs of LTMs

The LTM is a registration category available to firms that wish to do business in leverage contracts or wish to accept leverage customer funds.⁶¹ As of October 2009, there had not been any LTM registrations processed in approximately 23 years.⁶²

Registration as an LTM requires the firm to complete and submit a Form 7-R, as well as a Form 2-FR Statement of Financial Condition. Additionally, each firm must file a Form 8-R for each of its principals and APs.⁶³ NFA's Registration Department does not maintain procedures for processing LTM registration materials because the registration category is effectively defunct.

D. Foreign Firms and Part 30

Domestic and foreign firms and individuals seeking to operate in the U.S. as FCMs, IBs, CPOs or CTAs are generally required to register with the Commission through NFA's ORS. However, certain foreign firms and individuals that act in the capacity of FCMs, IBs, CPOs or CTAs and that seek to solicit U.S.-domiciled persons only with respect to transactions in futures or option contracts that are executed subject to the rules of a foreign board of trade (i.e., foreign futures and foreign options) may be exempted from the Commission's registration requirements under Part 30 of the Commission's regulations.

There are two provisions of Part 30 that provide for registration exemptions for non-U.S. domiciled persons that solicit U.S. domiciled persons in connection with foreign futures and options transactions: Regulation 30.5 and Regulation 30.10. A total of 206 foreign firms were operating pursuant to such exemptions as of October 2009.

⁶¹ 17 C.F.R. § 1.3(oo).

⁶² The last approval of an LTM registration occurred on December 1, 1986. There have only been five LTMs since the inception of the registration category. The last withdrawal of an LTM registration occurred on February 5, 1991.

⁶³ 17 C.F.R. § 3.10(a)(2) (requiring principals of LTMs to file a Form 8-R), §3.12(c) (requiring APs of LTMs to file a Form 8-R).

1. Regulation 30.5 Exempt Firms

Any foreign firm or individual required to register as an IB, CPO or CTA may apply for confirmation of relief from registration pursuant to Commission Regulation 30.5. Confirmation of such relief requires the applicant to file and submit a Form EFF 7-R⁶⁴ with NFA through ORS and to designate a domestic agent for service of process.

Unless the applicant designates NFA as the domestic agent, ORS creates a deficiency notice requiring submission of a proper agency agreement. Upon receipt of an agency agreement, a senior manager verifies that the applicant has submitted a proper agreement for service of process upon an agent within the U.S. If the Form EFF 7-R is incomplete or the applicant does not have a proper agency agreement on file with NFA, the NFA will generate and send a deficiency notice. Once there are no deficiencies, NFA is required to confirm the applicant's relief, and the applicant's status as an exempt foreign firm is then reflected in ORS.

2. Regulation 30.10 Exempt Firms

Commission Regulation 30.10 provides that any person (typically a foreign regulator or foreign self-regulatory organization ("SRO")) whose regulated firms would otherwise be subject to the Commission's registration requirements may file a petition with the Secretary of the Commission setting forth with particularity the reasons why that regulator or SRO believes its regulated firms should be exempted from such requirements.⁶⁵ The Commission may grant such an exemption if that regulator or SRO demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.⁶⁶

⁶⁴ The Commission's Form EFF 7-R Template is available online at:

<http://www.nfa.futures.org/NFA-registration/templates-and-forms/EFFApplication.pdf>.

The Form EFF 7-R requires the applicant or principal to disclose firm name, registration category, business information (including any other names the applicant has conducted business under), agent information for service of process within the U.S., FCMs or 30.10 exempt foreign firms with whom the applicant will do business, and a firm contact. The Form EFF 7-R also requires the names and address of each non-U.S. financial services industry regulatory authority or SRO that regulates the applicant. The applicant must certify that the information in the Form EFF 7-R is complete, accurate and not misleading, and violations of such certification are subject to criminal penalties.

⁶⁵ 17 C.F.R. § 30.10(a).

⁶⁶ *Id.*

In order for a foreign regulator or SRO to successfully petition for exemptive relief pursuant to Regulation 30.10, the regulator or SRO must submit a petition that demonstrates that its regulated firms are subject to a system of regulation that is comparable to the system established by the CEA and Commission regulations. The Commission also requires that an information sharing agreement exists between the foreign regulator or SRO and the Commission.⁶⁷

Upon receipt of a petition for relief pursuant to Regulation 30.10, Commission staff assesses the foreign regulator's and/or SRO's rules concerning: (i) registration and fitness; (ii) minimum financial requirements; (iii) protection of customer funds; (iv) reporting and recordkeeping; (v) minimum sales practice standards; and (vi) compliance requirements.⁶⁸ Pending the findings reached in the staff's review, the Commission either grants or denies the regulator's or SRO's petition for relief. In the former instance, the Commission issues a Regulation 30.10 order to the foreign regulator or SRO confirming that relief has been granted.

If relief has been granted, then the foreign firm seeking the benefit of such relief must apply for confirmation of relief with NFA. A foreign firm applying for confirmation of relief must submit an application to NFA that recites the representations set forth in the Regulation 30.10 order.⁶⁹ The firm's application must be sponsored by its foreign regulator or SRO.

Upon receipt of the firm's submission, NFA reviews the firm's representations and the foreign regulator's or SRO's representations for completeness. NFA also ensures that the firm has a proper agency agreement on file with NFA.⁷⁰

If the representations are complete and a proper agency agreement is in place, BSG staff enters the firm's information into ORS and sets the firm's status to "pending" as an exempt foreign firm. NFA also reviews any additional representations concerning the firm's U.S. affiliates, checks ORS and NFA's BASIC system for registration and disciplinary information, and contacts Division staff for any adverse fitness information relating to the firm.

⁶⁷ 17 C.F.R. part 30 app. A.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* A proper agency agreement is compliant with Commission Regulation 30.5(a), which enumerates the requirements for a written agency agreement for service of process.

Once NFA has confirmed that the representations of the foreign firm and its regulator or SRO are complete, and that Division staff does not have any adverse information on the firm, relief in accordance with the Regulation 30.10 order is confirmed. NFA then generates a letter to the firm's regulator or SRO (copying the Division) confirming the relief pursuant to the Regulation 30.10 order, and BSG staff changes the firm's ORS status from "pending" to "exempt foreign firm approved."

E. Registration Processing Procedures

The vast majority of the registration processing procedures have been automated since the implementation of ORS. However, Registration Department staff processes all filings for NFA's manual registration processing system and executes a variety of procedures that supplement ORS. For these non-automated procedures, NFA does not have any sort of a procedures manual. Instead, Registration Department staff relies primarily on its institutional knowledge in executing these non-automated procedures.

Registration Department staff did produce a series of single-page, typewritten procedures that explain how to process certain of the Commission's prescribed registration forms.⁷¹ No typewritten procedures were produced for LTMs and their APs (who file on Forms 7-R and 8-R, respectively, but must file manually) or for Part 30.5 exempt foreign firms (who file a Form EFF 7-R through ORS).

The Division finds that these single-page typewritten procedures lack enough substance to be relied upon as an actual "procedures manual." For example, the single-page, typewritten procedures contain circular commands like "review for completeness" or "verify [registration] with both SEC and FINRA," without ever explaining the steps that would constitute "completeness" or how exactly SEC and FINRA registrations are "verified." Still other procedures, such as the procedures for processing the registration application materials of notice registered IBs and FCMs, simply refer to specific registration forms by the wrong name ("Form Notice 7-R" instead of the proper name,

⁷¹ As concerns registration application processing, NFA's Registration Department produced single-page procedures for each of the following: Notice Form 7-R (used by notice registered FCMs and IBs), ATM Form 7-R (used by ATOMs), and Regulation 30.10 exempt foreign firms (used by foreign firms with Regulation 30.10 relief).

“Notice Form 7-R”). At best, these procedures only could be relied upon as reference in registration application processing by those with considerable institutional knowledge.

The Division recommends that the Registration Department draft a registration processing procedures manual that documents the activities of Registration Department staff. Despite the nominal processing requirements in NFA’s manual registration processing system and the sophistication of ORS, NFA would benefit from documenting its staff’s supplemental registration processing procedures by mitigating key person risk.⁷² The Division also would benefit from such documentation by having a benchmark against which the Registration Department staff’s performance can be measured in subsequent registration reviews.

The Division also has identified two areas in which the Registration Department’s substantive procedures can be improved. First, the Division recommends that registration application processing procedures include procedures for validating that firm registrants have provided their proper legal names and current addresses. In preparation for its on-site visit, Division staff conducted a random check of registrants’ information and found that certain firms had been able to register using names that were not the firms’ legal names. The discrepancies in these firms’ legal names range from slight (firms failing to identify their form of organization – LP, LLC, etc.) to serious (firms whose corporate charter had been suspended, and thus could not be operating) to severe (firms whose existence or registration could not be verified at all). Shortly after the on-site visit, Division staff identified a firm that had been able to register without providing its actual business address (it provided the address of a third-party fund administrator). Division staff contacted the third party fund administrator to get a business address for the registrant.

This procedural weakness can be addressed by: (i) modifying Forms 7-R and 8-R to specifically instruct the applicant to state its full legal name as well as the state, country, and date of its organization as a firm; and (ii) having Division staff periodically

⁷² Certain of the registration filings that are processed through NFA’s Manual Registration Processing System require very little in the way of an application, which leaves very little to be done in the way of application processing. For example, the Notice Form 7-R requires nothing more than a name, a business address, a CRD number, and a signature.

test samples of the information provided in registration materials to ensure that registrants have maintained proper and current information.⁷³

Second, the Division identified three particular areas in which improvements can be made to the process of confirming relief granted pursuant to Regulation 30.10:

1. There appear to be communication issues between NFA and foreign regulators and between NFA and Division staff. Specifically, foreign regulators have on occasion failed to respond to NFA's phone calls and/or written correspondence. NFA has on occasion failed to timely notify the Division about the foreign regulator's failure to respond. The Division noted that the Registration Department does not have formal procedures to address such circumstances.
2. The Division believes that NFA's current methodology of identifying exempt foreign firms that no longer qualify for exempt status is ineffective (although it is noted that primary responsibility lies with the foreign regulator or SRO).⁷⁴
3. The Division staff note that the Registration Department lacks any procedures for confirming Regulation 30.10 relief for cross-border futures brokers.⁷⁵

These weaknesses can be addressed by (i) having Division staff re-examine the Part 30 program to develop more clear requirements for submissions from applicants, exempt foreign firms, foreign regulators and/or SROs; (ii) having Division staff directly contact

⁷³ For instance, the SEC's Forms BD and ADV require a firm to disclose the state and country in which it is organized and the date of its organization. Including such a requirement in the Commission's Forms 7-R and 8-R would produce two benefits. First, it would likely eliminate applicants' use of non-legal names. Second, it would make it easy for NFA or Division staff to verify whether a firm is truly organized as it has disclosed in its Form 7-R or 8-R.

⁷⁴ Presently, the Registration Department charges exempt foreign firms an annual fee, and all firms failing to timely remit the fee receive a notice that their confirmation of relief is deemed withdrawn. This mechanism, however, can take as long as 13 months to identify the non-qualifying foreign firms.

⁷⁵ See 70 Fed. Reg. 2,621 (January 14, 2005) (delegating to NFA the responsibility for confirming relief to certain firms organized in one foreign jurisdiction and engaging in cross-border activities from a branch located in another jurisdiction that has not been issued an order under Regulation 30.10). The Commission's delegation grants NFA reasonable discretion to execute the duties of the delegation. Notwithstanding that Registration Department staff has never received a request for confirmation of relief from a cross-border futures broker pursuant to a Regulation 30.10 order, the Division notes that Registration Department staff is reluctant to exercise discretion in executing the duties of the delegation. Instead, Registration Department staff has indicated that they would consult with Division staff to execute the delegated functions. This reliance was addressed during the 2009 on-site visit, and a senior manager informed Division staff that NFA would likely not develop or implement internal procedures for confirming such relief, and would instead continue to look to consultations with Division staff. The Division does not feel that this is consistent with the letter or the spirit of the initial delegation.

foreign regulators/SROs concerning failures to timely provide relevant information; and, (iii) having Division staff develop more specific annual questionnaires for foreign regulators and/or SROs.

F. The Division's Testing

During Division staff's on-site visit, the Registration Department established two "test enrollments" in ORS so that Division staff could complete and submit test registrations and a test foreign firm exemption notification. Division staff completed and submitted test registrations for a CPO, a CTA, an AP of a CPO, and a test exemption for an exempt foreign firm (pursuant to Regulation 30.5).

With respect to the test registrations of the CPO, CTA and AP of a CPO, the Division found the performance of ORS to be good. ORS is a user-friendly system that provides ample guidance and information during the registration process. ORS registration screens are accurate and faithful reproductions of the Commission's prescribed Forms 7-R and 8-R. The Division also found that ORS did, in fact, prevent the submission of electronic versions of Forms 7-R and 8-R where information fields were left incomplete or were completed with information that did not conform to the expected format. In sum, the Division staff is satisfied with ORS's performance in accepting the test registrations for a CPO, a CTA, and an AP of a CPO.

With respect to the test exemption for the exempt foreign firm, the Division did note that ORS is geared more toward domestic registrants, and that ORS often provides information fields that are unsuitable for foreign entities. For example, a drop-down menu that requires the foreign firm to identify its form of business organization provides only U.S. forms of business entities. Additionally, ORS contains an information field that asks an exempt foreign firm to provide its Federal Employer Identification Number, which is not applicable to a foreign-domiciled firm. The Division staff also notes that the certifications at the close of the exemption filing process erroneously refer to the "Form EFF 7-R" as a "Form 7-R" (which is used to register domestic firms).

The Division's testing of NFA's BASIC system revealed a fundamental weakness in the display of Commission registrants' information. For instance, BASIC currently is not programmed to display that a Commission registrant is pending withdrawal in

situations where the registrant has either submitted a withdrawal petition or is subject to a withdrawal hold. Instead, such registrants are displayed as having a “current” registration status, which gives the false impression that the firm is active and in good standing.

Furthermore, BASIC currently displays Regulation 30.10 exempt foreign firms exactly as it displays Commission registered FCMs; BASIC does not reflect that the firm is exempt from registration as an exempt firm. This is a problem because BASIC fails to reveal that, unlike registered FCMs, these exempt foreign firms: (i) are not supervised by the Commission; (ii) may have been subjected to foreign regulator actions; and, (iii) may not participate in NFA’s arbitration program.

The Division is currently addressing these issues by arranging to have NFA re-program BASIC’s display fields. Specifically, the Division and NFA staff are arranging to have BASIC’s display fields reveal: (i) the instances in which Commission registrants are pending withdrawal; (ii) that Regulation 30.10 exempt foreign firms are regulated by a foreign regulator; and, (iii) whether Regulation 30.10 exempt foreign firms participate in NFA’s arbitration program.

IV. Fitness Processing

A. General Overview

The IG is responsible for initially investigating and processing all fitness-related matters. A fitness investigation is triggered whenever IG staff finds information that could potentially cause the NFA to deny, condition, suspend, restrict, or revoke the registration of any firm or individual.⁷⁶ Information that could trigger a fitness investigation can come from a variety of sources, but frequently an investigation is triggered either by an applicant or registrant providing a “yes” answer to any of the disciplinary questions in Forms 7-R, 8-R, or 8-T (Individual Withdrawal), or by an

⁷⁶ The aim of the IG’s fitness investigation is to determine whether the applicant or registrant has engaged in any of the conduct enumerated in Sections 8a(2) through 8(a)4 of the CEA. Some matters may trigger a fitness investigation even if they are not required to be disclosed in the disciplinary questions on the Commission’s prescribed registration forms.

applicant's FBI RAP sheet returning information that should have been disclosed in the disciplinary questions.⁷⁷

IG staff prioritizes among several concurrent fitness investigations by referring to a hierarchy prescribed in the IG procedures manual. Fitness-related matters for applicants with temporary licenses always take priority because the temporary licenses automatically convert to ordinary registrations within six months of their issuance unless the applicant first receives notice that proceedings to deny her registration are being initiated.⁷⁸ After applicants with temporary licenses come registrants with conditioned or restricted registrations, then registrants with approved, pending and suspended registrations, and finally, inactive registrants. If IG staff needs more time to reach a determination on a fitness-related matter, it can stay the approval or withdrawal of a registration by imposing a registration hold.

Registration Holds

The NFA's registration holds come in two forms: approval holds and withdrawal holds. Registration holds can be imposed by IG staff for any one of 31 reasons which are listed in the IG procedures manual. Certain registration holds, however, can only be lifted by the Registration Department's vice president or the IG manager.

Approval holds are used to prevent an applicant from becoming registered or to prevent a registrant from registering in a new registration category or soliciting new sponsors for its registration. The IG procedures manual explains that an approval hold must be imposed in ten enumerated situations, and may be imposed in other, non-specified situations.⁷⁹ Once imposed, the hold will prevent the approval of a firm's or individual's registration in all circumstances, except where a registered AP attempts to register with an additional sponsor (in this situation, an internal alert is generated to notify Registration Department staff). Approval holds are generally created as the result

⁷⁷ The IG receives information for investigation from: (1) the Commission's prescribed registration forms; (2) domestic and foreign commodity and securities regulators; (3) newspapers and periodicals; (4) fingerprint card results (FBI RAP sheets); (5) BASIC and CRD; (6) internet searches; and (7) NFA's Compliance and Legal Departments.

⁷⁸ 17 C.F.R. § 3.43(b).

⁷⁹ For example, an approval hold was placed on Company X because one of its principals was named as a defendant in civil litigation. This situation is not among the IG procedures manual's ten enumerated situations requiring imposition of an approval hold; however, the creation of an approval hold in such situations is not inconsistent with the procedures manual.

of some potentially disqualifiable information that the IG has discovered concerning an applicant, a registrant or a principal.

Withdrawal holds are used to prevent the termination or withdrawal of an FB's, an FT's or a firm's registration.⁸⁰ The IG procedures manual provides four different explanations for withdrawal holds that are imposed by NFA. The withdrawal hold will prevent the withdrawal of an FB's, an FT's or a firm's registration in all circumstances, except where an FB's or FT's exchange trading privileges are withdrawn or where a principal's status is withdrawn (in these situations, an internal alert is generated to notify Registration Department staff). Additionally, the Division or the Division of Enforcement can also impose withdrawal holds directly through ORS.

Fitness Image Cases

Each matter that triggers a fitness investigation requires IG staff to create a new file within NFA's "fitness image system."⁸¹ A new file, or "fitness image case," is created for each registration investigation.⁸² If the information initially provided to NFA is insufficient to completely understand the specific fitness-related matter and its resolution, IG staff acquires all necessary additional information. Once the staff has collected sufficient information, a "case summary" is prepared for each fitness image case.⁸³ Using the IG procedures manual,⁸³ IG staff determine whether the specific fitness-related matter can be resolved at the staff level or whether it requires further review by the IG manager and possibly referral to the RCL Committee. IG staff may consult with the IG manager and NFA's Legal Department in determining whether a matter requires escalation.

⁸⁰ Withdrawals are processed in accordance with Commission Regulation 3.33. 17 C.F.R. §3.33. Withdrawal holds may not be placed on APs or principals. APs require a firm sponsor as a condition for registration, so withdrawal holds generally are not imposed because they would require the AP's sponsor to (reluctantly) continue as sponsor for the duration of the hold. Principals are not registered, only listed in conjunction with their firms' registration, so there is no registration for which to prevent termination or withdrawal. FBs and FTs are the only categories of individual registrants that are subject to withdrawal holds.

⁸¹ The fitness image system is a computer program that provides the Registration Department with a central database in which to store electronic files relating to registration investigations.

⁸² ORS automatically creates a fitness image case anytime an applicant or registrant provides a "yes" answer to any of the disciplinary questions in Forms 7-R, 8-R, 3-R, or 8-T.

⁸³ The case summary comprehensively explains the details and course of a fitness investigation and summarizes all essential supplementary documentation.

The RCL Committee is a review board comprising members from NFA's Registration, Compliance and Legal Departments. The RCL Committee convenes periodically to formally review escalated fitness investigations and to determine whether, on the basis of the fitness-related matter, proceedings should be initiated to deny, condition, suspend, restrict or revoke the registration of the registrant or applicant. When IG staff determines a particular matter should be forwarded to the RCL Committee, it prepares a preliminary RCL case summary.⁸⁴ NFA's Legal Department reviews the preliminary RCL case summary and prepares its own draft RCL case summary.⁸⁵ A member of the RCL Committee reviews the Legal Department's draft RCL case summary, making any necessary revisions. A final draft RCL case summary is then presented to the RCL Committee. The RCL Committee determines whether the matter can be cleared or whether registration proceedings should be initiated.⁸⁶ Registration proceedings are conducted by NFA's Legal Department.

Registration proceedings are conducted when the RCL Committee determines that a basis exists for conditioning, suspending, denying, or revoking a registration. The registration proceedings are designed to provide the registrant or applicant with an opportunity to rebut the allegation that one or more of the bases for statutory disqualification exists. This rebuttal may include presenting evidence mitigating the seriousness of the wrongdoing or evidence that the individual has since undergone rehabilitation. Based upon NFA's findings and the applicant's or registrant's submissions, a designated subcommittee of NFA's Membership Committee will decide whether to dismiss the matter, or whether to condition, suspend, deny, or revoke the registration.

B. Investigations Group Procedures Manual

IG's procedures manual is a 117-page document that serves as both a teaching and a reference tool for IG staff. The IG procedures manual briefly describes the

⁸⁴ A "preliminary RCL case summary" is a far more detailed version of an ordinary case summary.

⁸⁵ A "draft RCL case summary" is a revision of the preliminary RCL case summary by NFA's Legal Department.

⁸⁶ The Commission also may institute a registration proceeding against an applicant or registrant.

responsibilities of IG staff and management and provides detailed instructions on the investigation and review of fitness-related matters.

The first section of the manual is dedicated to the IG's general procedures. This part of the manual instructs the staff on matters such as prioritization of fitness investigations, standardized form letters to applicants or registrants, and navigation of disciplinary records in FINRA's CRD. The second section of the manual focuses on specific fitness-related matters. This section goes through specifically enumerated actions and explains how each should be handled. For example, the manual instructs IG staff that criminal information concerning misdemeanor traffic charges that do not involve dishonesty can be resolved at the staff level, but that a misdemeanor traffic charge that involves altering a license plate sticker requires further review by management.

The Division identified two particular procedures in the IG manual that raised concerns. First, the manual instructs IG staff that a misdemeanor plea or conviction for giving police false identification during a traffic stop does not require disclosure as "false pretenses" and can be resolved at the staff level. Division staff subsequently discussed with the Registration Department's vice president about this procedure. The vice president informed staff that NFA's Legal Department advanced that particular interpretation of "false pretenses." NFA's Legal Department reasoned that because the common law action for false pretenses generally requires that the perpetrator wrongfully gain some property or benefit, giving false identification to a police officer during a traffic stop would not constitute false pretenses because no property or benefit was conferred. Commission staff discussed NFA's narrow interpretation of "false pretenses" in this context at the last meeting of the RWG. As a result of that discussion, NFA's Legal Department staff has agreed that IG staff will scrutinize such situations more closely in the future.

The second issue with the IG's procedures manual arose from a set of revisions adopted in August 2009, which included an opinion that an order from a governmental body (such as the SEC) finding that a firm or individual failed to supervise but not citing

to a specific statute does not need to be disclosed on question E of Forms 7-R or 8-R.⁸⁷ The procedure instructs IG staff to resolve such issues at staff level unless the order requires the firm to comply with undertakings. The manual was simultaneously amended to define “undertakings” to omit requirements that the firm or individual develop written procedures, hire a consultant, or pay civil monetary penalties (or disgorgement or restitution).

These two procedures highlight a weakness in the current communication of revisions to the procedures manual for the IG. This weakness can be addressed by having the Registration Department annually forward a comparison document reflecting the changes made to the IG’s procedures. Any questions or concerns about these changes can then be addressed within the context of the RWG.

C. The Division’s Testing

The Division reviewed NFA’s written procedures, as set forth in the IG’s procedures manual, and conducted interviews with NFA staff to evaluate whether NFA’s fitness investigations program properly addresses all relevant statutory and regulatory requirements, and is consistent with Commission delegation orders and other guidance. Division staff also tested a sample of fitness investigations during the target period to ascertain whether the execution of NFA’s fitness investigations program was in accordance with NFA’s written program. The Division concludes that NFA is adequately fulfilling its statutory obligations and the Commission’s regulatory objectives in carrying out the fitness investigations portion of the program.

On a sample basis, Division staff reviewed 30 registration investigation files to determine whether such files contained adequate documentation and whether NFA staff followed procedures set forth in the IG procedures manual. Each fitness investigation in the sample was reviewed to determine whether NFA staff properly:

⁸⁷ Question E reads: “In any case brought by a domestic or foreign governmental body (other than the CFTC), has the applicant ever been found, either after a hearing or in a settlement, to: (i) have violated any provision of an investment-related statute or regulation; or (ii) have violated any statute, rule, regulation or order which involves embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, counterfeiting, false pretenses, bribery, gambling, racketeering or misappropriation of funds, securities or property; or (iii) have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person” (emphasis in original).

- Followed up with respect to derogatory information reported on registration forms and identified through RAP sheets, CRD checks, and other sources;
- Determined whether derogatory information that was not disclosed on registration forms was required to be disclosed;
- Determined, based on the procedures manual, that issues raised by derogatory information could be resolved by staff or should be referred to the RCL Committee;
- Considered existing investigation hold information in its fitness reviews, and placed investigation holds in accordance with applicable procedures; and
- Documented in each case summary the procedures performed during the investigation; the derogatory information and/or the documents received (e.g., date of action, authority taking the action, sanctions); the intended action to be taken by the investigator concerning the matter under review in accordance with current guidelines; and the basis for the investigator's conclusions.

The sample fitness reviews originated from the following sources:

**EXHIBIT 2: BREAKDOWN OF ORIGATION
OF SAMPLED FITNESS INVESTIGATIONS**

<i>Source of Information</i>	<i>No.</i>
Form 8-R	20
Form 8-T	3
Compliance Department Referral	2
NFA BASIC Information	2
Periodic Review of SEC's Website	1
News Media	1
Report from registrant's sponsor	1
TOTAL CASES	30

1. Criminal Information

RAP sheet information was reviewed by IG staff in a total of 13 cases. Of those 13 cases, the majority involved non-specified misdemeanors, which were not required to be disclosed and which were resolved at the staff level. In cases where the RAP

sheet information had been reviewed and cleared previously by NFA as part of a prior fitness review, IG staff appropriately relied on the previous clearance to clear RAP sheet information again, as specified in the IG's procedures manual.

In two of the 13 cases, the RAP sheets disclosed felonies. In the first case, the application was withdrawn by the applicant's sponsor after NFA requested additional information on the matter. NFA placed an approval hold on the applicant with a note that the criminal matter would require review if another application is ever filed. The second case was ultimately referred to RCL, in accordance with IG procedures.

IG staff additionally reviewed one disclosure that came directly from the registrant's sponsor. In this case, an AP's sponsor contacted NFA after the AP was arrested and charged with several felony counts of driving under the influence of alcohol or drugs, and driving with a suspended license. IG staff followed its procedures by requesting that the sponsor provide documents and update the AP's registration record to disclose the pending criminal matter. The sponsor decided to drop the AP and filed an 8-T with the appropriate disclosure. Subsequent to the review period, the AP reapplied; IG staff advised the Division that the AP entered a nolo contendere plea on the felony charges and the case was referred to RCL.

2. Regulatory Information

Five of the files reviewed by IG staff contained information about regulatory investigations. Three of these regulatory investigations involved SEC actions, one involved an NFA Business Conduct Committee ("BCC") action, and one involved an exchange action reported under Commission Regulation 9.11.⁸⁸

The first of the SEC actions was not properly disclosed by the applicant. IG staff appropriately identified that disclosure was required and, in accordance with IG procedures, referred the matter to RCL on the failure to disclose, as well as for a potential disqualification under Section 8a(3)(B)(ii) of the CEA.⁸⁹

⁸⁸ 17 C.F.R. §9.11. Commission Regulation 9.11 generally requires an exchange to provide to the Commission written notice of the exchange's disciplinary action or access denial within 30 days of the final disposition.

⁸⁹ 7 U.S.C. §12a(3)(B)(ii). Section 8a(3)(B)(ii) of the Act grants the Commission authority to refuse to register or to register conditionally any person found, after a hearing, to have willfully aided, abetted, counseled, commanded, induced or procured a violation of the federal securities law by any other person.

The second SEC action concerned an ongoing action against a registrant pending withdrawal, which had not been timely disclosed by the registrant. IG staff correctly noted that the matter required RCL review because the registrant had failed to update its registration record to disclose the matter. IG staff consulted with Legal Department staff, who determined that the matter could be handled by a negative consent letter rather than referral to RCL.⁹⁰

The third SEC action was properly disclosed on an AP's Form 8-T Individual Withdrawal. IG staff noted in the case summary that the matter would require disclosure and review if the AP applied for registration again in the future, and reflected these requirements in an approval hold.

The BCC action, which was against a firm that had withdrawn its registration, imposed a permanent bar on NFA membership. The information, therefore, was reviewed by IG staff in the context of consideration for possible future registration. IG staff documented the determination that an existing approval hold remained and noted that the information would require review if the firm were to reapply.

The exchange action reported in accordance with Commission Regulation 9.11 was reviewed by IG staff in accordance with NFA procedures.

In each case above, IG staff followed the procedures in the IG manual.

3. Disciplinary Information in Withdrawal Notices

The IG's procedures require review of "yes" answers on Forms 8-T, as well as for other derogatory information that may be obtained against individuals and firms previously registered or pending withdrawal. These procedures generally require placement of approval holds that indicate the matters should be subject to full fitness reviews if the individual or firm reapplies. Division staff reviewed a sample that included three Forms 8-T, three individuals or firms that had withdrawn their registration, and one person pending withdrawal. Each of the cases was reviewed by IG staff in accordance with the procedures in the IG manual.

⁹⁰ A negative consent letter is used to assist firms and individuals in keeping their registration records current. The letters indicate that NFA intends to make an amendment to disclose the disciplinary matter(s) on the firm's and/or individual's registration record, unless NFA is notified in writing that they object to the amendment. If no objection is received within 10 days, NFA will update the registration record by making the appropriate changes. Negative consent letters may only be used for matters that have been resolved by NFA staff. If the matter requires referral to RCL, staff must request that the firm make disclosure in ORS and provide a notarized statement explaining the failure to disclose the matter.

V. Temporary Licenses and Conditioned Registrants

A. General Overview

1. Temporary Licenses

During the pendency of an application for registration as an FB, FT, IB or as an AP of an FCM, IB, CPO, or CTA, NFA is authorized, pursuant to Commission Regulations 3.40(a) and 3.44(a), to grant the applicant a temporary license, allowing the applicant to act in the capacity of an FB, FT, IB, or AP, respectively, while NFA processes the application.⁹¹ Individual applicants for registration as FBs or FTs who seek to obtain a temporary license must submit to NFA a certification signed by the chief operating officer of the DCM or DTEF that has granted the applicant trading privileges and certifying that the chief operating officer has reviewed the applicant's employment, credit, and other history in connection with the granting of trading privileges.⁹² This certification is submitted outside of ORS. Applicants for registration as IBs who seek to obtain a temporary license are required to submit guarantee agreements, completed Forms 7-R from their guarantor(s), and certifications of the their application materials executed by their guarantors.⁹³ Applicants for registration as an AP are not required to submit any additional materials as a pre-condition to being issued a temporary license. Once the ORS-required application materials have been submitted with NFA, eligible applicant FBs, FTs, IBs and APs will receive their temporary licenses online.

A temporary license is neither deemed to be a registration nor does it confer any right to registration.⁹⁴ However, it will convert to registration upon the earlier of the following two occurrences: (i) NFA determines the applicant is qualified for registration; or (ii) six months pass since the issuance of the temporary license without the applicant

⁹¹ 17 C.F.R. § 3.40(a), (c). However, applicant individuals that are subject to an order imposing conditions on the applicant's registration are required by Commission Regulation 3.40(a)(2)(iii) to have a sponsor meeting the requirements of Commission Regulation 3.60(b)(2)(i) (limiting the class of eligible sponsors to those without pending adjudicatory proceeding, those who are not in violation of FCMs' minimum net capital requirements, and those not barred from serving on SRO boards for disciplinary reasons) execute a Supplemental Sponsor Certification Statement ("Statement") and file such Statement with NFA before NFA can grant a temporary license.

⁹² 17 C.F.R. § 3.40(a)(2)(iv).

⁹³ *Id.* § 3.44(a).

⁹⁴ *Id.* §§ 3.43(b), 3.47(b).

receiving notice of the initiation of a proceeding to deny registration under Section 8a(2) or 8(a)(3) of the CEA.⁹⁵ Conversely, a temporary license will be automatically terminated in certain circumstances, such as:⁹⁶

- Failure of the AP applicant to within 20 days of the issuance of the temporary license to: (i) verify the information contained in his or her Form 8-R, (ii) provide satisfactory evidence that she has passed any applicable proficiency requirements, or (iii) submit the required registration fee;⁹⁷
- Failure of the AP applicant or the AP applicant's sponsor to submit a fingerprint card containing all ten fingerprints of the applicant individual to NFA within 20 days of the issuance of the temporary license;⁹⁸
- Failure of the AP applicant or the AP applicant's sponsor to respond to a request from the Commission or NFA to clarify any information in the individual's application or to resubmit the individual's fingerprint card;⁹⁹
- Termination of the association between the AP applicant and her sponsor or loss of trading privileges extended to the FB/FT applicant by all DCMs and/or DTEFs that provided the certification for the FB/FT applicant's temporary license;¹⁰⁰
- Withdrawal of the individual's application for registration;¹⁰¹
- Failure of the applicant individual to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted under the CEA;¹⁰²
- Failure of the applicant individual to pay the full amount of a reparation order within the time permitted under the CEA;¹⁰³

⁹⁵ *Id.*

⁹⁶ For purposes of brevity, we have limited our discussion to the circumstances by which the temporary licenses of APs, FBs and FTs can be terminated. The circumstances by which an IB's temporary license can be terminated are enumerated in Commission regulation 3.44. 17 C.F.R. § 3.44.

⁹⁷ NFA Rule 301(d)(1)(A).

⁹⁸ *Id.* § 3.40(a)(1)(ii).

⁹⁹ *Id.*

¹⁰⁰ *Id.* § 3.42(a)(2).

¹⁰¹ *Id.* § 3.42(a)(3).

¹⁰² *Id.* § 3.42(a)(4).

¹⁰³ *Id.* § 3.42(a)(5).

- Failure of the applicant individual to comply with an award resulting from arbitration under the rules of an exchange or under the rules of NFA within the time permitted under the rules of that forum;¹⁰⁴
- Revocation or withdrawal of the applicant individual's sponsor's registration;¹⁰⁵ and
- Discovery of an event, or the occurrence of an event during the interim, that requires an affirmative response to the disciplinary history on the applicant individual's Form 8-R.¹⁰⁶

Additionally, an applicant individual's temporary license will be terminated five days after the Commission or NFA provides the individual applicant with notice that his or her application may be subject to statutory disqualification.¹⁰⁷

For all AP applicants receiving temporary licenses who are required to submit a fingerprint card to NFA within 20 days of the issuance of such license, ORS is programmed to generate two automatic notices for NFA. The first notice alerts NFA that the temporary license is pending withdrawal because the AP applicant's (i) fingerprint card has not been submitted; (ii) application has not been verified; (iii) proficiency requirements have not been satisfied; or (iv) registration fee has not been paid. The second notice alerts NFA that the temporary license is withdrawn. ORS is not programmed to produce automatic notices concerning any of the other triggers for withdrawal of a temporary license; NFA must manually monitor all other triggers for withdrawal.

2. Conditioned Registrants

As a result of RCL proceedings, NFA may decide to register a firm or individual on a conditioned basis. The conditions on the registration will be enumerated either in the parties' settlement agreement or in NFA Legal's final order, and such conditions will be disclosed on BASIC.

The conditions upon registration vary in relation to the severity of the registrant's prior bad conduct and depending upon the registrant's registration category. For the purposes of discussion, however, some generalizations can be made about registration

¹⁰⁴ *Id.* § 3.42(a)(6).

¹⁰⁵ *Id.* § 3.42(a)(7).

¹⁰⁶ *Id.* § 3.42(a)(8).

¹⁰⁷ *Id.* § 3.42(a)(1).

conditions. For example, conditioned APs generally are required to meet monthly with their sponsors, during which time the sponsors are required to review the APs' monthly activities. These APs' sponsors will frequently be required to submit quarterly reports about the APs' activities to NFA. Conditioned FBs and FTs are commonly required to keep a log of all trading activity and to submit quarterly or monthly reports to NFA. NFA will contact the FBs' and FTs' sponsors if the reports are not timely filed. NFA provides notification regarding conditioned FBs and FTs to staff of the Division of Market Oversight by email. Generally, the information is limited to notification of the imposition or withdrawal of conditions, or that a request for withdrawal has been submitted. A new email is generated every time there is a change in a registrant's conditioned status. NFA's Compliance Department will monitor conditioned firms and APs and will notify other DSROs of conditions on FCMs for whom NFA is not the DSRO. For most registration categories, conditions are frequently scheduled to expire after a period of one to two years, but in some cases, registrants may be afforded an opportunity to petition for early removal of their conditions.

Following the conditioning of a registration, an NFA employee will update an internal docketing system to schedule the following events: (i) a due date for a quarterly or monthly report; (ii) the date on which the registrant can first petition to have the conditions lifted; and (iii) the date on which the conditions expire.¹⁰⁸ Within the docketing system, a chart is maintained by NFA Legal that identifies all open registration cases with conditions. At the end of each month, NFA Legal updates that chart, verifying the information in the chart is consistent with: (i) the information stored elsewhere in the docketing system; (ii) monthly reports from the General Counsel's database; (iii) the list of conditioned firms and individuals that is maintained by the BSG and sent to Commission staff, as is discussed below; and (4) the email alert generated by the Registration Department.

Upon receiving a sponsor's quarterly report on the conditioned registrant, NFA Legal distributes copies to each of the attorneys overseeing registration cases and to the IG. If any concerns are raised, an attorney from NFA will contact the sponsor for

¹⁰⁸ NFA uses the LegalEdge docketing system to track all changes to the status of a conditioned registrant.

resolution. If a sponsor is late in filing its quarterly report, NFA Legal will contact the sponsor for resolution as well.

B. Temporarily Licensed and Conditioned Registrant Procedures

The Registration Department was not specifically asked to produce temporary licensing procedures as part of the registration review. To the extent that such issues were discussed in the IG procedures manual, the Division did not note any procedural deficiency. The Division did not conduct specific testing of NFA's procedures to issue temporary licenses outside of its testing of the fitness review process.

The procedures for conditioning a registration are discussed in the IG procedures manual, and the Division's evaluation of the IG's procedures and performance concerning fitness-related issues appears in Section IV, above.

VI. Registration Maintenance

A. General Overview

After submitting their application materials through ORS or through NFA's manual processing system, applicants for registration and registrants become subject to a duty to promptly correct any information in a submitted Form 7-R or Form 8-R if such information becomes deficient or inaccurate.¹⁰⁹ For ORS filers, corrections must be submitted through ORS by entering the "Update/Withdraw Registration" application and clicking on the link for the specific information that must be corrected. This process is the functional equivalent of the applicant or registrant submitting a Form 3-R Supplemental Statement to Application for Registration, which is required by Commission Regulation 3.31.¹¹⁰ Only firms and FBs or FTs can submit corrections in ORS; sponsoring firms must file corrections for their APs and principals. For manual filers, such corrections require submission of a hardcopy Form 3-R. Once corrected, the applicant or registrant will submit the corrected information to NFA through ORS.

¹⁰⁹ 17 C.F.R. § 3.31(a)(1), (b).

¹¹⁰ *Id.*

Additionally, registered FCMs, IBs, CPOs, and CTAs are required to review and update their registration information on an annual basis.¹¹¹ Any registered FCM, IB, CPO, or CTA that fails to complete its annual update within 30 days of the date established by NFA is deemed to have requested withdrawal.¹¹² Annual updates are submitted through ORS.

To remind the registrant that it is required to complete its annual update, NFA has programmed ORS to generate a series of automatic notices. Forty-five days before a registrant's update is due, the first notice is generated to alert the registrant of the approaching due date. Immediately upon missing the due date, ORS generates the second notice to remind the registrant that it has failed to timely complete its update. Finally, ORS generates a final notice that the registrant is deemed to have requested withdrawal, consistent with Commission Regulation 3.10(d), for failing to complete its annual review and update within 30 days of its due date.

B. Registration Maintenance Procedures and Testing

The Registration Department was not asked to produce registration maintenance procedures as part of the registration review. ORS automates the registration maintenance procedures for over 99.3% of all Commission registrants. The Division did not conduct testing of NFA's program to ensure that registrations are properly maintained.

VII. Withdrawal from Registration

Like registration application processing, registration withdrawal processing is divided between ORS and NFA's manual processing system. ORS processes the withdrawal requests of FCMs, IBs, CPOs, CTAs, and the principals and APs thereof. NFA's manual withdrawal processing system processes the withdrawal requests of FBs,

¹¹¹ *Id.* § 3.10(d).

¹¹² *Id.* Withdrawal for failure to timely complete and annual review and update will be processed in accordance with Commission Regulation 3.33(f), which states that withdrawal becomes effective on the 30th day after it was requested.

FTs, notice registered FCMs and IBs, Limited Purpose FCMs, ATOMs, APs of ATOMs, LTMs, APs of LTMs, and exempt foreign firms.

A. Withdrawal through ORS

A firm registered as an FCM, IB, CPO, or CTA submits its request to withdraw its registration in much the same way that the firm initially submitted its application for registration. The firm's Security Manager logs onto ORS and clicks on the horizontal navigation tab reading "Update/Withdraw Registration" to begin its withdrawal request. From there, the Security Manager clicks on the link labeled "Process a Firm Withdrawal Request." The firm's Security Manager is then prompted through an electronic version of the Form 7-W Firm Registration Withdrawal,¹¹³ which is required for withdrawal by Commission Regulation 3.33.¹¹⁴ As with requests to process initial applications in ORS, the firm's Security Manager is not required to complete the firm's withdrawal request in a single visit; there are links that allow both firm registrants and individual registrants to "Finish an Incomplete Withdrawal Request."

Once submitted, the firm's withdrawal request will be visible to employees in the Registration, Legal and Compliance Departments via a "Pending Withdrawal Screen" within ORS. Alerts also are issued to Commission staff, as well as NFA's Compliance and Legal staffs. Commission staff, NFA Compliance staff and NFA Legal staff each can place a withdrawal hold on a firm.

A principal or an AP must request withdrawal through its sponsoring firm's Security Manager. The sponsoring firm's Security Manager logs onto ORS and clicks on the horizontal navigation tab reading "Update/Withdraw Registration." In the "Update/Withdraw Registration" sub-path, the Security Manager must click on the link labeled "Process an Individual Withdrawal Notice." The Security Manager is then directed through an electronic version of the Form 8-T Individual Withdrawal,¹¹⁵ which is required for withdrawal by Commission Regulations 3.12(b) and 3.31(c).¹¹⁶

¹¹³ The Commission's Form 7-W Template is available online at:
<http://www.nfa.futures.org/NFA-registration/templates-and-forms/7wForm.pdf>.

Form 7-W is the withdrawal form that firms are required to use to withdraw their registrations as FCMs, IBs, CPOs, or CTAs.

¹¹⁴ 17 C.F.R. § 3.33.

¹¹⁵ The Commission's Form 8-T Template is available online at:

B. Withdrawal through NFA's Manual Registration System

1. FBs and FTs

NFA's manual withdrawal procedures for FBs and FTs require the individual to complete and submit a hard copy of the Form 8-W, which is required by Commission Regulation 3.33(e).¹¹⁷ Registration Department staff review the registrant's Form 8-W for completeness. If the form is incomplete, the employee drafts a deficiency letter and sends it to the FB or FT. If the form is complete, the employee notifies an employee in the BSG, who changes the FB's or FT's status in ORS to reflect the pending withdrawal. Provided that the Commission has not placed a hold on the registrant's withdrawal for any reason, NFA will withdraw the registrant's registration on the thirtieth day following the receipt of the Form 8-W.

2. Notice Registered FCMs and IBs, Limited Purpose FCMs

Neither Commission regulations nor NFA's registration rules prescribe specific requirements or forms for the withdrawal requests of notice registered FCMs and IBs, or Limited Purpose FCMs. Registration Department staff indicated that notice registered FCMs and IBs, and Limited Purpose FCMs currently all request withdrawal by informal letter.

3. ATOMs and their APs

ATOMs and their APs file their requests for withdrawal on Forms ATM 7-W and 8-T, respectively. Registration Department staff explained that NFA does not have procedures for the withdrawal of ATOMs because the registration category is effectively defunct.

4. LTMs and their APs

LTM's and their APs file their requests for withdrawal on Forms 7-W and 8-W, respectively. Registration Department staff explained that NFA does not have procedures for the withdrawal of LTM's because the registration category is effectively defunct.

<http://www.nfa.futures.org/NFA-registration/templates-and-forms/Form8-T.pdf>.

Form 8-T is the withdrawal form that individuals are required to use to withdraw their registrations as APs or their listings as principals. If the firm is filing the Form 8-T more than 30 days after the termination of its association with the principal or AP, NFA will charge the firm a \$100 late fee.

¹¹⁶ 17 C.F.R. § 3.12(b); 17 C.F.R. § 3.31(c).

¹¹⁷ *Supra* at note 116.

C. Registration Withdrawal Procedures

As with registration application processing, the Registration Department does not have a procedures manual for registration withdrawal. Registration Department staff appears to rely primarily on ORS and the staff's own institutional knowledge in withdrawal processing. Again, the Registration Department produced a series of single-page procedures for certain registration categories, and none for others. Of the single-page procedures that were produced, most suffer from a similar deficiency as the registration application procedures: sparse and often circular descriptions of processing functions.

D. Division Staff's Testing

Division staff reviewed a sample of 30 withdrawals from registration to determine whether NFA staff placed holds on withdrawals in accordance with established procedures. NFA placed withdrawal holds on three of the 30 withdrawals in the sample.

For two of the withdrawals for which holds were placed, NFA Compliance Department staff did not provide timely notice to Registration Department staff prior to the withdrawal of the registrations. Registration staff was required to reinstate the registrations of these two firms and then place them on withdrawal hold. While it is acknowledged that this is a relatively small sample from which to draw a conclusion, the failure of NFA's Compliance Department to timely request that withdrawal holds be placed prior to the firms' withdrawal from registration in two of the three situations raises a concern.

VIII. Registration Recordkeeping

NFA is required to serve as official custodian of all of the Commission's registration-related records that are filed with NFA. Pursuant to that duty, NFA must, in accordance with reasonable procedures acceptable to the Commission, preserve Commission registration-related records in a secure manner and appropriately limit access thereto for official purposes only. The Commission's delegation orders also obligate NFA to make available, upon reasonable request, the public portions of the

Commission's registration records, and to keep records of instances where requests for nonpublic information has been made. These registration recordkeeping responsibilities are carried out by two separate sub-groups within NFA's Registration Department: the Records Center and the DRG.

A. The Records Center

1. General Overview

The Records Center is responsible for executing NFA's responsibilities as the Commission's official custodian of registration-related records filed with NFA. The Registration Department's vice president officially serves as the records custodian, and the Registration Department's executive assistant supervisor and one of the Department's senior managers serve as the deputy records custodians.¹¹⁸ The other senior manager of the Registration Department supervises the Records Center.

During the Division's on-site visit, staff was informed that hard copies of registration records for registrants are sent off-site and are currently being preserved indefinitely.¹¹⁹ NFA's off-site storage providers are Iron Mountain, which stores older registration-related records, and R4 Services, which stores more recent registration-related records; both Iron Mountain and R4 Services are National Archives and Records Administration compliant.¹²⁰

¹¹⁸ The DRG procedures manual also lists the individual currently serving as the official records custodian and the two individuals currently serving as deputy records custodians. This information is listed in the DRG's procedures manual because these are the only individuals who are able to certify the Commission's registration records maintained by NFA, certification of which is most commonly requested by the staff of the Commission's Division of Enforcement.

¹¹⁹ NFA is required to maintain the Commission's registration records in a secure manner and readily accessible unless the filing person has been inactive for all purposes for three years. 49 Fed. Reg. 39,593, 39,595 (Oct. 9, 1984). After the three-year period, NFA is permitted to store such records at an appropriate site for an additional seven years, after which the records may be destroyed. 58 Fed. Reg. 19,657, 19,661 (Apr. 15, 1993). The DRG procedures manual states that three emails from NFA's Office of General Counsel (April 25, 2006; October 24, 2005; March 2, 2005) have instructed them to suspend the process of destroying records indefinitely and until further notice. Records Center staff verifies that this is the current policy.

¹²⁰ NFA is required to maintain the Commission's registration records at a location in accordance with procedures acceptable to National Archives and Records Office and to the Commission. 49 Fed. Reg. 39,593, 39,596 (Oct. 9, 1984). The Registration Department's vice president confirmed during the Division's 2009 on-site visit that NFA maintains all Commission registration records at off-site vendors that are National Archives and Records Administration compliant.

The Records Center has two systems for managing the Commission's registration-related records: the Registration File Tracking System ("RFTS") and the Registration Image System ("RIS"). RFTS is a computerized tracking system that allows Records Center staff to register all requests for Commission registration records and to record the location of all registration-related records. RFTS allows Records Center staff to ensure that all charged-out registration files can be tracked until they are returned to storage. RIS is a computerized imaging system that allows NFA to scan and index copies of new registration-related documents.

2. Records Center Procedures Manual

The Records Center does not have a procedures manual. Instead, the Registration Department produced a single-paragraph job description.

B. The Document Research Group

1. General Overview

The DRG is responsible for processing all requests for access to the Commission's registration-related records for which NFA serves as official custodian.¹²¹ The DRG processes requests by first assigning each a request number and entering numbered requests into the DRG's logbook. Working from the DRG logbook, staff contacts the requester to resolve any ambiguity about the request, documenting the general gist of any such correspondence. When DRG staff has a complete understanding of the request, it gathers all information from the Commission's records, makes copies of the information, and organizes the copies in descending chronological order. DRG staff double-checks the assembled copies against NFA's internal databases to ensure that no document has been erroneously omitted.¹²² DRG staff then reviews the assembled copies to determine whether any information contained

¹²¹ The NFA also serves as official custodian for certain non-registration records; such duties are not within the scope of this registration review.

¹²² During this process, DRG staff completes a firm or individual "maintenance sheet" for any physical document whose information is not accurately represented in ORS. This maintenance sheet is delivered to the BSG, which will amend ORS accordingly. The DRG procedures manual includes blank copies of the maintenance sheet in its appendices.

therein is classified as public or non-public.¹²³ If the information requested is deemed public, then the deputy records custodian prepares a signed cover letter and the assembled copies are mailed to the requester. If, however, the information requested is deemed nonpublic, the DRG staff forward the request and assembled copies to Commission staff.

After answering requests for public information or forwarding requests for nonpublic information to Commission staff, the DRG staff maintains a copy of the request and a copy of the outgoing cover letter for a period of two years. These records are maintained on-site at NFA's Chicago Headquarters.

2. DRG's Procedures Manual

The DRG procedures manual is a 33-page document that serves as the primary reference document for DRG staff. As compared with the sparse, single-page procedures document the Registration Department produced for its registration processing program, the DRG procedures manual is exemplary in its comprehensiveness and its detail. The manual explains every step that a DRG staff member must take to process a request for information in sufficient detail such that any NFA staff member could execute the duties of the DRG. Moreover, where appropriate, the manual cites to applicable statutes, regulations, and Commission orders where DRG staff can obtain further information. Finally, the manual's three appendices provide separate charts that allow DRG staff to quickly determine which information is public and which is nonpublic.

The Division identified only one issue with the DRG procedures manual – a lingering reference to the Commission's former Division of Trading and Markets.

3. Division Staff's Testing

The Division tested a sample of requests for information received during the target period to ascertain whether the DRG staff's execution conformed to NFA's statutory and regulatory obligations, as well as the DRG's own written procedures. The Division concludes that NFA is adequately fulfilling its statutory and regulatory obligations, and DRG staff dutifully executes the procedures in the DRG manual.

¹²³ The DRG procedures manual's appendices A through C faithfully distill the Commission's Regulations on which information within registration-related records is deemed public or nonpublic.

During the target period, NFA received a total of 2525 requests for information:

**EXHIBIT 3: TOTAL VOLUME OF REQUESTS FOR ACCESS TO COMMISSION
REGISTRATION-RELATED RECORDS FOR THE TARGET PERIOD**

<i><u>Request Type</u></i>	<i><u>No. Processed</u></i>
CFTC Request	212
Disclosure Document Request	35
FOIA Request	14
Subpoena Request	21
Telephone	6
Miscellaneous	2237
TOTAL REQUESTS	2525

Of these, Division staff reviewed 14 Freedom of Information Act (“FOIA”) requests, 20 “Miscellaneous” requests, and 35 “Disclosure Document” requests.

For each request, DRG retains a record of the request itself, a copy of any correspondence or communication with the requestor, and a copy of NFA’s outgoing cover letter in response to the request.

Based on the materials reviewed, the Division observes that DRG staff was complying with its own written procedures. There was only one request for nonpublic information, and this request was forwarded to the Commission in accordance with the DRG’s procedures manual. There were multiple requests for information concerning a registrant that has been inactive for a period of greater than ten years, and each of those requestors was informed that the inactive registrant’s registration-related records were destroyed after ten years of inactivity. There was one request for a nine-year old disclosure document, and that requestor was informed that the disclosure document had been destroyed (compliance-related records are destroyed after five, not ten, years). There were several requests for individuals’ Forms 8-R, and Division staff confirmed with the DRG’s executive assistant supervisor that NFA produces only redacted copies of the requested forms.

IX. Information Center

A. General Overview

The IC is the primary interface between NFA's Registration Department and the general public (including Commission registrants). The IC is an integral part of NFA's Registration Program, and important to NFA's orderly administration of the Commission's registration's functions.

The IC staff is seated in a cubicle cluster at NFA's Chicago Headquarters, and the IC's senior manager is located in a nearby office. Calls are placed in a queue by chronological order, rolling to the next available IC staff member. During phone calls, IC staff members can speak directly to one another because of their geographic proximity and with their senior manager through an internal messaging system. The IC's senior manager can listen in on any IC staff member's phone calls and can intercept any phone call from a staff member if necessary.¹²⁴ The entire IC staff meets weekly with their senior manager to discuss new developments or issues, especially any changes in information or procedures concerning registration or compliance. The IC is staffed Monday through Friday (except holidays), between the hours of 9:00 a.m. and 6:00 p.m. (Eastern).¹²⁵

B. The Information Center's Procedures Manual

The IC's procedures manual is a 111-page document that serves as the primary reference document for IC staff. The IC procedures manual instructs IC staff on the basic structure and substance of the Commission's regulations and NFA's rules, as well as about procedures, tone, and demeanor for handling calls, including instruction on how calls should be answered and what registration-related information staff is prohibited from disclosing. The IC's senior manager explains that because of the high level of consistency among questions, IC staff is not dependent upon the procedures manual for the vast majority of calls.

¹²⁴ The Information Center's senior manager reports that she has never needed to intercept any phone call from an IC staff member.

¹²⁵ Inquiries may be submitted either by phone at (312) 781-1410 or 800-621-3570, or by email at information@nfa.futures.org.

The procedures manual is divided into eight sections, each of which provides IC staff with the basic information required to develop answers to callers' questions.¹²⁶ The largest section, occupying nearly half of the manual, addresses registration-related issues. The registration section provides a comprehensive overview of the Commission's registration categories, NFA membership requirements, registration fees and annual NFA dues. The section also explains ORS, applicants' fingerprinting requirements, changes to registration, proficiency testing, branch offices, annual filings, the consequences of failing to timely submit annual filings or pay annual dues, and the withdrawal process. The registration section provides IC staff with a series of hypothetical questions about registration requirements, especially questions about which entities must register, what registration entails, and how much registration costs.

Division staff identified numerous inaccuracies in the IC's procedures manual. Below are examples of inaccuracies identified in the manual:

- The manual is incomplete and/or inconsistent when compared with information available on NFA's website. For example, the charge to copy records is listed in the manual as \$0.15/page; however, NFA's website lists the copying charges as \$0.15/page with a \$3/quarter hour charge for researching and duplication, but all charges under \$10 are waived.
- The manual often neglects the reference materials available on the CFTC's and others' websites. For example, the manual directs callers to file a complaint with NFA via email or phone, but does not mention NFA's online complaint process.
- Certain fee schedules are outdated. For example, the first NFA Membership Annual Dues Schedule column is for fees from April 30, 2006 through October 1, 2007.
- The manual is sometimes vague, indicating that there are exceptions to a rule, but frequently not explaining what those circumstances are or who can provide such information. For instance, the manual includes statements such as "[An] AP cannot be an AP of an FCM and a CTA in certain circumstances. [An] AP cannot be an AP of an IB and a CTA in certain circumstances."

¹²⁶ The eight sections cover everything from the history and governance of NFA, to the operation of NFA's General Counsel's Office, to instructions for directing press inquiries.

When the deficiencies in the manual were brought to the attention of the IC's senior manager during the 2009 on-site visit, Division staff was informed that wherever the IC procedures manual is incorrect, it is unlikely that IC staff would follow the IC procedures manual.¹²⁷ This raised two concerns. First, the IC's procedures manual needs to be thoroughly revised to: (i) eliminate all incorrect references, (ii) update all outdated information, and (iii) provide references to the most easily accessible versions of information. Second, there should not be a disjunction between the IC's written procedures and the IC's actual procedures; the IC should maintain a procedures manual that reflects the department's actual procedures.

C. Division Staff's Testing

The IC's senior manager provided Division staff with comprehensive data on IC total call volume. The overall call data shows that since 1996 (when the IC began collecting this data), the IC's total call volume has decreased by 60%.¹²⁸ NFA attributes this considerable decrease in call volume largely to the development of NFA's website and to the introduction of ORS.

Division staff analyzed specific telephone data from three separate, one-week periods near the time of the staff's on-site visit.¹²⁹ The first of these periods was the week ending Friday, February 27, 2009, the second was the week ending Friday, March 27, 2009, and the final was the week ending Friday, April 24, 2009. The specific data compiled from the three separate, one-week periods reveals a fair level of consistency among current call volumes, wait times, and the number of abandoned calls (Exhibit 4). On average, the IC received 202 telephone inquiries each day. The average wait time per caller was 14 seconds, and, on average, three callers abandon their calls each day.

¹²⁷ The IC's senior manager believes that IC staff would have memorized the correct information, given that the vast majority of callers ask the same questions.

¹²⁸ In 1996, the IC received a total of 177,517 telephone inquiries. In 2008, the IC received a total of only 46,771 telephone inquiries and an additional 1,858 email inquiries.

¹²⁹ A one-week period is defined here as a single business week, Monday through Friday.

**EXHIBIT 4: CALL CENTER'S HANDLING OF
INCOMING CALLS DURING SAMPLE WEEKS**

	<u>Week Ending 02/27/09</u>	<u>Week Ending 03/27/09</u>	<u>Week Ending 04/24/09</u>
Total Call Volume	214 daily	211 daily	181 daily
Wait Time	16 sec. per call	14 sec. per call	12 sec. per call
Total Calls Abandoned	3 daily	3 daily	2 daily
Total Email Responses	173	204	228

The data also reveals a fairly high level of consistency in the nature of callers' inquiries (Exhibit 5). Questions about registration consistently comprised the overwhelming majority of calls – a weighted average of 65.14% for all three weeks' data. In fact, in each one-week period, registration questions more than doubled, and during the week ending February 27 registration questions more than tripled, the number of calls for all other categories combined.

**EXHIBIT 5: BREAKDOWN OF SAMPLE WEEKS'
PHONE CALLS BY INQUIRY**

<u>Inquiry:</u>	<u>Week Ending 02/27/09</u>			<u>Week Ending 03/27/09</u>			<u>Week Ending 04/24/09</u>		
	<u>No. of Calls</u>	<u>Percent of Total Calls</u>	<u>Percent Handled by IC</u>	<u>No. of Calls</u>	<u>Percent of All Calls</u>	<u>Percent Handled by IC</u>	<u>No. of Calls</u>	<u>Percent of All Calls</u>	<u>Percent Handled by IC</u>
Registration	705	65.83%	99.01%	659	62.46%	99.09%	610	67.25%	98.52%
Compliance	229	21.38%	55.02%	254	24.08%	60.24%	224	24.70%	62.05%
Arbitration	6	0.56%	0.00%	14	1.33%	7.14%	6	0.66%	0.00%
Strategic Planning & Communication	1	0.09%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
General Counsel's Office	2	0.19%	0.00%	2	0.19%	0.00%	2	0.22%	0.00%

X. Conclusion, Corrective Actions and Recommendations

A. Conclusion

In conclusion, the NFA's Registration Program sufficiently satisfies each of the 10 primary objectives identified by the Division. NFA's Registration Program has sufficient procedures to execute the Commission's delegated registration and fitness functions with respect to the vast majority of registrants, and the Division believes that the NFA processes the vast majority of registration-related filings without issue. While the Commission's overall regulatory requirements are being satisfied, the Division has identified a number of weaknesses in certain key areas in which the Commission's and/or NFA's procedures must be improved. These weaknesses are addressed in the Division's corrective actions and recommendations.

B. Findings, Recommendations and Action Items

The following is a summary of the specific findings reached by Division staff in its review of NFA's Registration Program. Each finding is followed immediately by the Division's recommendations and/or prescribed action items:

1. The Registration Department does not have a procedures manual that documents all of the procedures followed in processing registrations and withdrawals. The Registration Department uses ORS to process the majority of registrations and withdrawals, and relies extensively on the institutional knowledge of its staff for any supplemental procedures.

Recommendation: The Division recommends that NFA comprehensively document and collect all of the procedures required in processing registrations and withdrawals, including the supplemental procedures executed by Registration Department staff. Specifically, NFA needs to document the procedures of the Business Systems Group and the procedures used in NFA's manual registration processing system.

2. The Registration Department's procedures manual for the Information Center is, in various areas, incomplete, inconsistent and/or outdated. In these areas, the manual does not accurately reflect the procedures that Registration Department staff follows or the information that Registration Department staff disseminates.

Recommendation: The Division recommends that NFA update its current procedures manual for the Information Center and that NFA establish procedures to regularly review, update and correct the procedures manuals for each of the sub-groups within the Registration Department.

3. The NFA has not instituted, nor has the Commission required, any procedures for validating that firm registrants have provided their proper legal names and current addresses. Division staff has identified several entities that had registered with improper names and/or provided improper addresses.

Recommendation: The Division recommends that NFA modify the instructions to Commission Forms 7-R and 8-R to specifically instruct the applicant to state its full legal name. Form 7-R also should be revised to require that the firm provide the date of its organization in addition to the current requirement to disclose the state in which it is organized. This action will curtail the incidental use of improper names and addresses, and provide NFA and Commission staff with sufficient information to easily verify registrants' information.

Additionally, the Division recommends that NFA search public records to verify that U.S. firms have registered using their proper legal names and current addresses. NFA has recommended that such searches be conducted upon receipt of every ORS enrollment request. Division staff and NFA will work together to design the parameters of such searches and the frequency with which such searches should be conducted after registration. Division staff and NFA staff will also consult on how these searches might be applied to non-U.S. firms in the future. This action will implement a procedural safeguard against the incidental or purposeful use of improper names and addresses.

Action Item: Division staff will periodically test the information in registration materials to ensure that Commission registrants are maintaining proper and current information. This action will ensure that Commission registration records are at all times correct and current.

4. NFA's public web-interface, the Background Affiliation Status Information Center ("BASIC"), is not programmed to display that a Commission registrant is pending withdrawal. BASIC currently displays registrants that have requested withdrawal, but that are subject to withdrawal holds, as having a current registration status, conveying the impression to the public that they are active and in good standing.

Recommendation: The Division recommends that NFA re-program BASIC to indicate that registrants subject to withdrawal holds are "pending withdrawal." Division staff has already discussed this recommendation with NFA's Legal Department and Registration Department staff. NFA is

currently working to re-program BASIC so that registrants subject to withdrawal holds will be listed as “pending withdrawal.”

Division staff and NFA staff will work together to craft language that will be provided in response to inquiries about a registrant’s “pending withdrawal” status.

5. The Registration Department has not created any formal procedures or produced standardized forms by which a notice registration would be withdrawn. Currently, notice registrants withdraw by informal letter.

Recommendation: The Division recommends that NFA require withdrawal of notice registration by means of a standardized form. This action will formalize the notice registration withdrawal process.

6. The Division noted a number of inconsistencies on the part of both the Registration Department and the Division in the processes for confirming and revoking relief pursuant to Commission Regulation 30.10.

Action Item: Division staff has held inter-divisional meetings concerning the Commission’s Part 30 program and several meetings with NFA about revising numerous aspects of the Part 30 program. Division staff has already outlined a course of action, and secured the cooperation of NFA, in remedying its various concerns about the Part 30 program.

7. There is no mechanism in place by which the Registration Department provides regular notice of changes to the procedures manual for its Investigations Group. Presently, changes in the procedures manual are addressed through the Registration Working Group (“RWG”) on an ad hoc basis.¹³⁰

Recommendation: The Division recommends that NFA provide the Division, through the RWG, with NFA’s quarterly updates to the procedures manual for its Investigations Group. This action will ensure that Division staff periodically reviews the procedures manual used to implement the statutory disqualification provisions of the CEA.

8. The Division staff identified two instances in which NFA Compliance Department staff did not provide timely notice of a withdrawal hold to Registration Department staff. Registration Department staff was required to reinstate the registrations of these two firm registrants and then place them on withdrawal hold. The failure of NFA’s Compliance Department to timely request withdrawal holds raises concern regarding NFA’s inter-departmental communications.

Recommendation: The Division recommends that NFA improve the timeliness of communications between its Compliance Department and its

¹³⁰ The RWG is a group of Commission staff and NFA staff that meet to discuss registration issues.

Registration Department. NFA has agreed to review its processes for communicating withdrawal holds and to make improvements where deficiencies are identified.

9. In 2003, the Registration Department was denied access to the FINRA CHRI database. Consequently, NFA must conduct independent background searches to discover information contained within FINRA's CHRI database.

Action Item: Division staff will seek to minimize and potentially eliminate duplicative efforts by domestic financial regulatory agencies, furthering the current Administration's goals of regulatory harmonization.

An Abbreviated History of the Commission's Delegations

Sections 4c,¹³¹ 4d,¹³² 4e,¹³³ 4f,¹³⁴ 4k,¹³⁵ 4m,¹³⁶ and 19¹³⁷ of the Commodity Exchange Act (“CEA”) and Parts 3 and 30 of the Commission’s Regulations¹³⁸ mandate that certain entities and individuals satisfying the statutory definitions of agricultural trade option merchants (“ATOMs”), futures commission merchants (“FCMs”), floor traders (“FTs”), floor brokers (“FBs”), introducing brokers (“IBs”), associated persons (“APs”), commodity pool operators (“CPOs”), commodity trading advisors (“CTAs”), and/or leverage transaction merchants (“LTMs”) must register with the Commission.

The 1974 legislation that amended the Act that created the Commission included provisions for the establishment and registration of futures associations.¹³⁹ The Commission granted the National Futures Association’s (“NFA’s”) application to become a registered futures association on September 22, 1981, and NFA began operations on October 1, 1982.

Section 233(5) of the Futures Trading Act of 1982, enacted as Section 17(o) of the CEA,¹⁴⁰ authorized the Commission to delegate any portion of its registration functions to a registered futures association.

On August 3, 1983, the Commission began a series of delegations of its authority regarding the implementation of the statutory and regulatory registration requirements to NFA by delegating the registration of IBs and their APs.¹⁴¹

Approximately 14 months later, on October 9, 1984, the Commission delegated the registration of FCMs, CPOs, CTAs and their APs to NFA as well.¹⁴²

On May 3, 1989, the Commission issued final rules delegating the registration of LTMs and their APs to NFA.¹⁴³ The registration of FBs and FTs was delegated to NFA on September 29, 1986¹⁴⁴ and on April 15, 1993,¹⁴⁵ respectively.

¹³¹ 7 U.S.C. §6c.

¹³² *Id.* §6d.

¹³³ *Id.* §6e.

¹³⁴ *Id.* §6f.

¹³⁵ *Id.* §6k.

¹³⁶ *Id.* §6m.

¹³⁷ *Id.* §23.

¹³⁸ Commission regulations referred to herein are found at 17 C.F.R. Ch. I (2009).

¹³⁹ 7 U.S.C. §21.

¹⁴⁰ *Id.* §21(o).

¹⁴¹ 48 Fed. Reg. 35,158 (Aug. 3, 1983).

¹⁴² 49 Fed. Reg. 39,593 (Oct. 9, 1984).

Similarly, through a series of delegations, the Commission granted NFA the authority to process withdrawals of registrants beginning on March 15, 1988 and finally completing the delegations on April 26, 1993.¹⁴⁶ In addition to delegating the ability to process registrations and withdrawals therefrom, the Commission delegated the power to deny, suspend, or revoke the registration of FCMs, IBs, CPOs, CTAs, ATOMs, and their respective APs, as well as that of FBs and FTs, to NFA.¹⁴⁷

Concurrent with its delegation of the authority delineated above, the Commission delegated to NFA the ability to grant temporary licenses to APs of FCMs, IBs, CPOs, and CTAs,¹⁴⁸ and to grant temporary licenses to guaranteed IBs.¹⁴⁹

Sections 2(a)(1)(A)¹⁵⁰ and 4c¹⁵¹ of the CEA vest the Commission with exclusive jurisdiction over the domestic offering and sale of foreign futures contracts traded on or subject to the rules of a foreign board of trade. On August 5, 1987, the Commission promulgated final rules implementing those provisions of the Act as Part 30 of the Commission's Regulations.¹⁵²

On September 11, 1997, the Commission authorized NFA to perform fitness checks with respect to foreign firms acting in the capacity of FCMs seeking relief under Commission Regulation 30.10, to receive filings from foreign firms acting in the capacities of CPOs and CTAs filing for exemption from registration under Commission

¹⁴³ 54 Fed. Reg. 19,556 (May 3, 1989).

¹⁴⁴ 51 Fed. Reg. 34,490 (Sept. 29, 1986).

¹⁴⁵ 58 Fed. Reg. 19,657 (Apr. 15, 1993).

¹⁴⁶ 53 Fed. Reg. 8,428 (Mar. 15, 1988) (authorizing NFA to process withdrawals of FCMs, IBs, CPOs, and CTAs); 54 Fed. Reg. 41,068, 41,113 (Oct. 5, 1989) (permitting NFA to process withdrawals of LTM's); 57 Fed. Reg. 23,136 (June 2, 1992) (granting authority to NFA regarding the withdrawal of FBs); 58 Fed. Reg. 19,575 (Apr. 15, 1993) (delegating authority to NFA regarding the withdrawal of FTs).

¹⁴⁷ 50 Fed. Reg. 34,885 (Aug. 28, 1985) (delegating with respect to FCMs, IBs, CPOs, CTAs, and APs thereof); 59 Fed. Reg. 38,957 (Aug. 1, 1994) (delegating with respect to FBs and FTs, but still requiring NFA to refer certain FB and FT registration actions to the Commission for determination); 62 Fed. Reg. 36,050 (July 3, 1997) (providing a full delegation of the authority to deny, suspend or revoke the registration of FBs and FTs); 63 Fed. Reg. 63, 913 (Nov. 17, 1998) (delegating with respect to ATOMs and APs thereof).

¹⁴⁸ 49 Fed. Reg. 8,226 (Mar. 5, 1984) (delegating authority to issue temporary licenses to APs of IBs); 49 Fed. Reg. 39, 593 (Oct. 9, 1984) (delegating authority to issue temporary licenses to APs of FCMs, CPOs, and CTAs).

¹⁴⁹ 51 Fed. Reg. 45,759 (Dec. 22, 1986).

¹⁵⁰ 7 U.S.C. §2(a)(1)(A).

¹⁵¹ *Id.* §6c.

¹⁵² 52 Fed. Reg. 28,980 (Aug. 5, 1987); 17 C.F.R. pt. 30 (2009).

Regulation 30.5, and to monitor compliance with both Commission Regulations.¹⁵³ Two years later, on June 8, 1999, the Commission delegated to NFA the ability to: (i) revoke, after 30 days written notice, the confirmation of relief under Commission Regulation 30.10 for any firm that does not maintain a valid agreement with an agent for service of process in the United States in accordance with Commission Regulation 30.5; (ii) revoke, after consultation with the Division of Clearing and Intermediary Oversight (“Division”),¹⁵⁴ the confirmation of any relief under Commission Regulation 30.10 for any firm that fails to comply with the terms and conditions on which relief was confirmed; and (iii) withdraw the confirmation of relief under Commission Regulation 30.10 from any firm that notifies NFA of its decision to forfeit such relief or cease business operations.¹⁵⁵

On June 28, 1999, the Commission granted NFA the power to review all petitions filed under Commission Regulation 30.5 to ensure that the petitioner has satisfied all of the requirements under the regulation and to notify the petitioner whether the petition is complete or deficient.¹⁵⁶

In 2005, the Commission authorized NFA to confirm relief under Commission Regulation 30.10 to a firm organized in one foreign jurisdiction, but operating in one or more other jurisdictions through a branch or branches, provided that, in the aggregate, the two or more regulators or self regulatory organizations (“SROs”) regulate the FCM consistent with the provisions of Appendix A as delineated in the Rule 30.10 Order issued to each regulator or SRO.¹⁵⁷ Additionally, the 2005 delegation permitted NFA to confirm modified relief under Commission Regulation 30.10 to an FCM that is organized and operating pursuant to the European Passport from a branch location in a jurisdiction whose regulator or SRO has received relief under Commission Regulation 30.10, notwithstanding that the Commission has not issued a Rule 30.10 Order to the home country regulator.¹⁵⁸

¹⁵³ 62 Fed. Reg. 47,792 (Sept. 11, 1997).

¹⁵⁴ The term “Division” refers either to the Division of Clearing and Intermediary Oversight or to its predecessor, the Division of Trading and Markets.

¹⁵⁵ 64 Fed. Reg. 30,489 (June 8, 1999).

¹⁵⁶ 64 Fed. Reg. 28,910 (May 28, 1999).

¹⁵⁷ 70 Fed. Reg. 2,621 (Jan. 14, 2005).

¹⁵⁸ *Id.*

In addition to the CEA and Parts 3 and 30 of the Commission's Regulations, the Commission issued an Interpretative Statement regarding Sections 8a(2)(C) and (E) and 8a(3)(J) and (M) of the Act,¹⁵⁹ as well as two guidance letters to NFA with respect to its exercise of discretion regarding its delegated registration authority, which are included as Appendix A to Part 3 of the Commission's Regulations.¹⁶⁰ Specifically, in the Interpretative Statement, the Commission delineated the circumstances under which it would exercise its authority to limit an individual's or entity's ability to register with the Commission when such applicant is subject to a statutory disqualification under Sections 8a(2)(C) and (E) and 8a(3)(J) and (M).¹⁶¹ The guidance letters to NFA address the meaning of the phrase "other good cause" under Section 8a(3)(M) of the Act with respect to assessing the fitness of floor brokers, floor traders, and applicants in either registration category, and provided additional direction to NFA on how the Commission expected it "to exercise its delegated power, based upon the experience of the Commission and the staff with the registration process...and [to] help ensure that NFA exercises its delegated power in a manner consistent with Commission precedent."¹⁶²

¹⁵⁹ 7 U.S.C. §8a (establishing a system of statutory disqualifications from registration and vesting the Commission with broad discretion to deny, condition, suspend, restrict, or revoke the registration of any person subject to one or more of the statutory disqualifications).

¹⁶⁰ 17 C.F.R. pt. 3 app. A (2009).

¹⁶¹ *Id.*

¹⁶² *Id.*

ORS Security Manager Designation Process

A key process in ORS enrollment is the designation of a security manager who will serve as the key intermediary between the firm and ORS throughout the duration of the firm's registration. The security manager, once enrolled in ORS, will have complete authority and responsibility for establishing and administering all other ORS user accounts for that registrant. Because security managers alone serve this intermediary function, NFA recommends that firm applicants designate at least two people as security managers (depending upon the size of the firm). Firms applying for registration as an FCM, IB, CPO and/or CTA may nominate any person of their choosing to serve as security manager; individuals applying for registration as an FB or FT must themselves serve as their own security manager.

In order to designate a security manager, ORS requires the applicant to supply the security manager's personal information – birth date, social security number and mother's maiden name. Because this information is sensitive, NFA requests that these ORS screens be completed and submitted solely by the individual serving as security manager. The security manager also must provide answers to two user identification questions, which will serve as the primary tool if the security manager ever forgets her ORS logon or password.

Once these screens are completed, ORS immediately provides the security manager with a temporary password, which contains at a minimum one upper or lower case letter, one number and one special character. The security manager must wait for NFA to approve her enrollment before the password is activated (approximately 24 hours).

Upon receipt of a security manager's enrollment, the BSG reviews the following issues:

- Irregularities in the Enrollment: inconsistencies in the applicant's name or form of organization, incomplete information evidenced by the use of "N/A" or similar, or other inaccurate information or inappropriate data entered in the address field;
- Misleading Firm Name: incorporation of the term "exchange" or "board of trade" is prohibited by Commission regulations, other determinations are made by the Registration Department's vice president or by an attorney in NFA's Office of General Counsel;

- Existing NFA ID Number: name search in ORS reveals whether the security manager's firm is already listed with an NFA ID.

If the BSG discovers any of the above-listed issues, it contacts the security manager by telephone or email to resolve.

If none of the above-listed issues is discovered, then the BSG will assign the applicant an NFA ID number (or use an existing NFA ID number if the applicant is already registered in a different category). At the close of business, ORS will generate an enrollment letter ("Enrollment Letter"). The Enrollment Letter will provide the firm with a user name. NFA then will send the Enrollment Letter to the firm the morning of the business day following the approval of the security manager's enrollment request. The Enrollment Letter is sent by U.S. mail to the applicant and it includes a copy of either the "ORS Firm User's Guide" or the "ORS Floor Broker/Floor Trader User's Guide," which provide the applicant with a brief tutorial of ORS. Once the applicant has received the Enrollment Letter, the security manager must then log onto ORS, whereupon she will be immediately prompted to change the previously provided temporary password. The security manager's new password must be at least nine characters and must also contain 3 of 4 of the following: upper case letters, lower case letters, numbers or special characters. The security manager is then ready to enter ORS and begin establishing other ORS user accounts or completing her firm's or her own registration application.

If a security manager ever forgets her ORS password must contact NFA in order to obtain a temporary password that will allow her to unlock the registrant's account. Password reset services are available either through NFA's website or by contacting the IC (whose contact information is also available on NFA's website). In order to receive a temporary password, the security manager must give NFA her user name, and NFA will then ask the two user identification questions. If the security manager answers either question incorrectly, NFA will try to verify the security manager identity by verifying her social security number and date of birth. If NFA cannot verify the identity of the security manager, then the registrant must send NFA an original hard copy letter, on the

registrant's letterhead and signed by one of the registrant's listed principals, stating that the individual is the security manager.

If a registrant's only security manager has separated from the firm, then the registrant must send NFA an original hard copy letter, signed by one of the registrant's listed principals, stating that the former security manager is no longer with the firm and naming a new individual as the security manager. Upon receipt of this letter, an employee of the BSG will contact the individual named as the new security manager and provide that individual with the user name and password of the former security manager. The new security manager must then log onto ORS using the user name and password of the old security manager, and then add herself as the new security manager using the "Add Firm User" link in ORS. Once added, ORS will generate a user name and password for the new security manager. The new security manager must next log off of ORS, and then log back on using her newly issued user name and password, whereupon she will be immediately prompted to change the previously provided temporary password. Once logged on with her newly issued user name and password, the new security manager may then delete the old security manager from ORS.