A firm would not need to submit fingerprints for its principals if it provided similar information to its primary regulator and this information were accessible to the Commission, nor would it be subject to the minimum financial requirements applicable generally to independent IBs provided it met the capital requirements of, and was otherwise in good standing with, its primary regulator. The Commission believes that the limited nature of an IB's activities, its responsibility for its employees and good standing with another financial regulator with such requirements permit waiver of the IB financial requirements.74

Customers of a "limited" IB, like customers of a regular IB, would be required to transmit funds for trading directly to an FCM, which would carry all customer positions on a fully-disclosed basis. 75 The IB would be required to sponsor its salespersons, who would be subject to a proficiency testing, training or experience requirement, as discussed below. The NFA and the section 4(c) contract markets would determine the specific format of the information to be supplied to the NFA. 76

revoked under Sections 8a(3) or 8a(4) of the Act, 7 U.S.C. 12a(3) or 12a(4).

74 Thus, such an IB would not need to raise its own capital or enter into a guarantee agreement with an FCM as generally required for IBs by Commission Rules 1.17(a)(1)(ii) and (a)(2)(ii) respectively. The Commission believes this is consistent with a no-action letter issued on December 1, 1994 by the Division of Trading and Markets, wherein an IB that is a member of various U.K. futures exchanges and a wholly-owned subsidiary of a U.S. FCM was permitted to continue to introduce U.S. contract market transactions based on substituted compliance with U.K. regulatory requirements in lieu of a guarantee agreement under Commission Rule 1.10(j). The Division based its position upon, among other things, the IB's status as a registrant under the Act pursuant to which it is subject to CFTC requirements including, but not limited to, registration, sales practice and other conduct of business rules, recordkeeping, reporting and anti-fraud provisions.

⁷⁵ Commission Rule 1.57, 17 CFR 1.57 (1995).

76 The CBT also stated that the term "temporary," used in proposed Section 36.6 could suggest impermanence or a transition period until a final license would be obtained, and that the term "limited" more accurately depicts the registration status of those APs eligible only to market Section 4(c) transactions. The Commission agrees that, in light of its adoption of the provision for limited IBs referred to above, it is also appropriate to refer to APs confining their activities to Section 4(c) contract market transactions as "limited APs." The Commission notes that limited APs may also be eligible for a temporary license during the period that background checks are performed by the NFA.

With respect to testing requirements for limited APs, the NFA could substitute participation in a training module developed by the contract market offering the Section 4(c) transactions or an experience requirement in lieu of the regular, generally applied proficiency test. This is consistent with the Commission's previous approval of NFA Registration Rules 401(b), (c), and (d), permitting

As discussed above, certain commenters viewed different registration requirements for each section 4(c) product as potentially administratively unwieldy. Similar concerns were expressed when the Commission adopted Rule 3.12(j), upon which proposed section 36.6 was modeled.⁷⁷ Despite the fact that the Commission has permitted section 4(c) contract markets and the NFA, subject to Commission approval, the discretion to vary registration procedures on a contract-by-contract basis, the Commission believes that the special registration procedures ideally would be substantially identical for the various section 4(c) contracts, and that it would be preferable to implement uniform procedures for all such contracts at the outset. As when the Commission adopted Rule 3.12(j), a contract market seeking special registration procedures with respect to persons limiting their activities to section 4(c) contract market transactions may consult and develop the applicable procedures with the NFA and submit them for Commission consideration in conjunction with the other submissions which must be filed under this Part. Of course, if a particular contract market or firm found administration of the alternative procedures too difficult, it could follow the general provisions applicable to any IB or AP.⁷⁸

3. Dispute Resolution

As proposed, all of the provisions of the Act and Commission rules concerning reparations and private rights of action will continue to apply under Part 36. 59 FR at 54144. The CBT commented that section 4(c) contract market transactions should be exempt from Commission Rule 180.3(b)(6), 17 CFR 180.3(b)(6)(1995), which prescribes

persons registered as general securities representatives who restrict their activities under the Act to register as APs without taking the generally required National Commodity Futures Examination ("Series 3 test") and permitting persons to register if they have passed the regulatory portions of the Series 3 test and the test of a foreign futures authority. The Commission expects that the regulatory portions of the Series 3 test would be included in any modified testing or training module developed for limited APs referred to herein. Further, the Commission will entertain applications to substitute training received in connection with other regulatory requirements, or to recognize specialized ethics training, in satisfaction of the training required under Commission Rule 3.34.

⁷⁷ See 57 FR 23136, 23141-23142 (June 2, 1992).

language that must be included in any pre-dispute arbitration agreement between an FCM and its customers. The prescribed language essentially notifies the customer that, notwithstanding the agreement to arbitrate, the customer can pursue a claim against the FCM through the Commission's reparations forum.

The CBT reasoned that institutional customers do not need this protection, "either negotiat[ing] such rights or elect[ing] not to sign the pre-dispute arbitration agreement." The NYMEX agreed, arguing that the availability of the reparations forum was unnecessary because disputes involving section 4(c) contract market transactions would be "more than adequately addressed by existing exchange arbitration procedures and comparable NFA procedures."

The Commission has determined to retain the availability of reparations as a forum for section 4(c) contract market transaction participants as well as the notice provisions of Rule 180.3(b)(6). Although section 4(c) contract market transactions will be entered into by institutional or relatively "sophisticated" participants, the reparations program was designed as an inexpensive forum where any customer may seek redress for violations of the Act committed by industry professionals registered with the Commission. The Commission sees no reason to eliminate the availability of this dispute resolution forum.

G. Anti-fraud and Anti-manipulation

The Commission proposed in section 36.9 to apply to section 4(c) contract market transactions the proscriptions against fraud and manipulation found in the Act, 79 and Commission Rules 33.9(d) and 33.10, 17 CFR 33.9(d) and 33.10, which prohibit price manipulation and fraud, respectively, in connection with commodity option transactions. In addition, proposed section 36.9 included a stand-alone prohibition of fraudulent misconduct in connection with section 4(c) contract market transactions.

Commenters expressed varying views on the need for a stand-alone prohibition of fraud in connection with section 4(c) contract market transactions. Some supported including in Part 36 an anti-fraud provision separate and independent from the provisions of the Act and Commission regulations that would, in any event, continue to apply. Others, however,

⁷⁸ Persons following the registration procedures which are generally applicable to transactions under the Act, as well as all of those already registered under the Act, can be involved in the offer and sale of Section 4(c) contract market transactions without being subject to additional registration requirements.

⁷⁹ Specifically, proposed Section 36.9 applied to Section 4c contract market transactions Sections 4b and 4o of the Act, 7 U.S.C. 6b and 6o, and those provisions of Sections 6(c), 6(d), and 9(a) of the Act, 7 U.S.C. 9, 15, 13b and 13(a), that prohibit price manipulation.