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#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 210 of the Futures Trading Practices Act of 1992 added a new paragraph (b) to Section 4p of the Commodity Exchange Act (Act), mandating ethics training for all persons registered under the Act.<sup>1</sup> On April 15, 1993, the Commission adopted Rule 3.34 to implement this Congressional mandate.<sup>2</sup> By Federal Register release issued on September 13, 1993, the Commission provided further guidance with respect to the contents of applications to be submitted by persons seeking to provide ethics training to registrants.<sup>3</sup>

Proposed amendments to Rule 3.34, published in July 1994, would: (1) require a certification by persons seeking to provide ethics training that they would not be disqualified from registration under the Act; (2) limit certain representations that ethics training providers may make concerning their status as such; (3) facilitate the use of videotape and electronic presentations; and (4) enhance the ability of a registered futures association to track the ethics training attendance dates of registrants. The Commission received four comment letters on the proposed rule amendments. The commenters included a registered futures association, a computer-based ethics training provider and two other ethics training providers. The commenters generally supported, or acknowledged their understanding of, the objectives of the proposed rule amendments. Some commenters, however, criticized the scope of the proposed rule amendments. Further, one of the ethics training providers who submitted comments requested

additional time to update its program materials to comply with the changes that would be required by the rule amendments. Comments addressed to specific provisions of the proposed rule amendments and the Commission's resolution of the issues raised therein are discussed below in the context of the relevant rule provision.

Based upon its review of the comments received on the proposed amendments and in light of its experience in administering this program, the Commission has adopted amendments to Rule 3.34 regarding ethics training providers. The provisions of Rule 3.34 relating to the topics to be covered in ethics training and the minimum requirements for attendance at such training remain unchanged. The amendments adopted herein will, subject to proposed amendments to Rule 3.34 published in this edition of the Federal Register, permit a person to be included by a registered futures association on a list of authorized providers of such training upon filing of a notice with a registered futures association certifying that: (1) he is not subject to a statutory disqualification from registration under the Act;<sup>4</sup> (2) barred from service on self-regulatory organization (SRO) governing boards or committees pursuant to Commission Rule 1.63 or SRO rules; or (3) subject to a pending proceeding with respect to possible violations of the Act or rules or orders promulgated thereunder. These amendments will also prohibit certain representations with respect to a person's status as an ethics training provider; allow wider use of ethics training presentations by videotape and computer; and require ethics training providers to furnish records of attendees to a registered futures association upon request.

By separate release published in this edition of the Federal Register, the Commission is proposing several additional amendments to Rule 3.34 to address certain further issues relating to ethics training providers. These amendments would require ethics training providers other than SROs: (1) To satisfy the same proficiency testing requirements as registrants; and (2) have at least three years of pedagogical or relevant industry experience.

##### II. Amendments to Commission Rule 3.34

###### *A. Required Certifications by Applicants to Become Ethics Training Providers*

Currently, three categories of persons may provide ethics training to

Commission registrants pursuant to Rule 3.34: (1) SROs; (2) entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or (3) any other person whose program "is approved by the Commission for this purpose."<sup>5</sup> The amendments to Rule 3.34 proposed in July 1994 would have continued to permit SROs and state-accredited continuing education providers to act as ethics training providers without compliance with any additional requirements. With respect to persons other than SROs or state-accredited entities, the proposed amendments would permit such persons to provide ethics training upon filing of a notice with a registered futures association certifying that the person, all principals thereof (as defined in Commission Rule 3.1(a))<sup>6</sup> and any individuals who, on behalf of such person, conduct in-person ethics training sessions or prepare ethics training videotape or electronic presentations,<sup>7</sup> are not subject to: (1) any statutory disqualification from registration under Sections 8a(2) or (3) of the Act;<sup>8</sup> (2) a bar from service on SRO governing boards or committees arising from relevant disciplinary history, as specified in Commission Rule 1.63<sup>9</sup> or any SRO rule adopted thereunder; or (3) a pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or

<sup>5</sup> 17 CFR 3.34(b)(3)(1995).

<sup>6</sup> 17 CFR 3.1(a)(1995).

<sup>7</sup> Thus, if an entity organizes a corporation to offer ethics training and hires an instructor to conduct the lectures, the notice must include within its coverage the entity, the corporation and the instructor. Such notice must also be amended as necessary to cover any additional instructors required to handle the number of persons enrolling in the ethics training program.

<sup>8</sup> 7 U.S.C. 12a(2) or (3)(1994). The Act specifies several grounds for disqualification from registration including, among others, a prior revocation of registration, felony conviction, and an injunction relating to futures or securities activities.

<sup>9</sup> Pursuant to Rule 1.63, each SRO must maintain in effect rules which render a person ineligible to serve on its governing boards, disciplinary committees, or arbitration panels who, among other things, has been found within the prior three years to have committed a disciplinary offense or entered into a settlement agreement where the charge involved a "disciplinary offense," is currently suspended from trading on any contract market, is suspended or expelled from membership in any SRO, or is currently subject to an agreement with the Commission or an SRO not to apply for registration or membership. A "disciplinary offense" for these purposes means any violation of the Act or the rules promulgated thereunder or SRO rules other than those relating to (1) decorum or attire, (2) financial requirements, or (3) reporting or recordkeeping, unless resulting in fines aggregating more than \$5,000 in a calendar year, provided such SRO rule violations did not involve fraud, deceit or conversion, or result in a suspension or expulsion. 17 CFR 1.63 (1995).

<sup>1</sup> This provision of the Act is codified at 7 U.S.C. 6p(b)(1994) and states that:

The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

<sup>2</sup> 58 FR 19575, 19584-19587, 19593-19594 (April 15, 1993).

<sup>3</sup> 58 FR 47890 (September 13, 1993). The Commission has reviewed applications from more than twenty-five persons seeking to provide ethics training to registrants.

<sup>4</sup> Sections 8a (2) and (3) of the Act, 7 U.S.C. 12a (2) and (3) (1994).