



COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 9

RIN 3038-AE15

Technical Amendments to Rules on Registration and Review of Exchange

Disciplinary, Access Denial or Other Adverse Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is proposing technical amendments to its regulations that govern registration and review of exchange disciplinary, access denial or other adverse actions. The amendments would integrate existing advisory guidance and the amendments to part 9 would also incorporate swap execution facilities (“SEFs”) and update provisions currently applicable to designated contract markets (“DCMs”). The proposal revises existing rules to delete numerous cross-references to previously deleted regulations and adds citations to applicable parallel provisions for SEFs and DCMs. Additionally, the proposal addresses the publication of final disciplinary and access denial actions taken by the SEFs and DCMs on their exchange websites.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3038-AE15, by any of the following methods:

- CFTC website: <https://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website.
- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission regulation 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Deputy Director, Division of Market Oversight, at 202-418-5429 or rberdansky@cftc.gov; or David Steinberg, Associate Director, Division of Market Oversight, at 202-418-5102 or dsteinberg@cftc.gov, in each case, at the Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581.

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- I. Background.**
- A. Description of Part 9

On December 20, 1978, the Commission adopted part 9 rules relating to the review of exchange disciplinary, access denial, or other adverse actions.¹ The rules govern the process and procedures by which the Commission may review exchange disciplinary and access denial actions, detailing the appellate process under which such review will be instituted and conducted in cases where a person applies to the Commission for review. In addition to setting forth procedures and standards governing filing and service, motions, and settlement, the rules also cover the process by which exchanges must provide notice of the final disciplinary action to the subject of the disciplinary action and to the Commission, as well as the publication of such notice. As discussed below, DCMs and SEFs are already required to comply with the part 9 regulations.

B. DCM Final Rules and Part 8 Removal

In June 2012, the Commission implemented Core Principles and Other Requirements for Designated Contract Markets (“DCM Final Rules”).² Commission regulation 38.2 of the DCM Final Rules provides that DCMs shall comply with all applicable regulations under Title 17 of the Code of Federal Regulations, except for certain exempt provisions.³ Part 9 is not included in the list of exempt provisions. Furthermore, part 9 applies to DCMs by defining “exchange” in Commission regulation 9.2(c) for purposes of the rules as any board of trade which has been designated as a contract market.⁴

¹ 43 FR 59343 (Dec. 20, 1978).

² 77 FR 36612 (June 19, 2012).

³ 77 FR 36697 (June 19, 2012); 17 CFR 38.2.

⁴ 17 CFR 9.2(c).

Additionally, in the DCM Final Rules, the Commission adopted regulations in “Subpart N—Disciplinary Procedures” of part 38 to amend the disciplinary procedures applicable to DCMs.⁵ Several of the regulations adopted in subpart N of part 38 are similar to the text of the disciplinary procedures found in former part 8—exchange procedures for disciplinary, summary, and membership denial actions.⁶ In order to avoid confusion from the regulations containing two sets of disciplinary procedures for DCMs, the Commission removed part 8 from the regulations.⁷ As a result of this removal, the current part 9 rules, which contain cross-references to part 8 throughout, are being updated in this rulemaking (“NPRM” or “Proposal”) to instead cite to parallel provisions now contained in part 37 for SEFs and part 38 for DCMs.⁸

C. SEF Final Rules

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) repealed some sections of the Commodity Exchange Act (“CEA” or “Act”), amended others, and established new categories of Commission registrants, including

⁵ 17 CFR 38.700 through 38.712.

⁶ 43 FR 41950 (Sept. 19, 1978); 17 CFR 38.700 through 38.712. For example, part 8 contained regulations 8.05 (Enforcement staff); 8.08 (Disciplinary committee); and 8.20 (Final decision). Subpart N of part 38 has corresponding provisions: 38.701 (Enforcement staff); 38.702 (Disciplinary panels); and 38.709 (Final decisions).

⁷ Although Commission regulation 38.2 of the DCM Final Rules specifies that DCMs are not required to comply with part 8, the Commission removed part 8 to avoid any confusion resulting from the regulations containing two sets of exchange disciplinary procedures as part of the Adaption of Regulations to Incorporate Swaps Rulemaking. 17 CFR 38.2; and removal of part 8 at 77 FR 66304 (Nov. 2, 2012).

⁸ 17 CFR parts 9, 37, and 38. For example, in Commission regulation 9.2(k) the definition of “summary action” cites to Commission regulations 8.17(b), 8.25, and 8.27 which were removed along with the entirety of part 8. Proposed Commission regulation 9.2(k) will instead cite to part 37, appendix B, Core Principle 2, paragraphs (a)(10)(vi), (a)(13), and (a)(14) [for SEFs] and part 38, appendix B, Core Principle 13, paragraphs (a)(4), (a)(6), and (a)(7) [for DCMs].

SEFs.⁹ Pursuant to the Dodd-Frank Act, the Commission adopted new rules in part 37 Core Principles and Other Requirements for Swap Execution Facilities (“SEF Final Rules”).¹⁰ The Commission notes that since the advent of the Dodd-Frank Act’s new statutory framework for regulating swaps, it adopted a rulemaking (Adaptation of Regulations to Incorporate Swaps) implementing conforming changes to existing regulations to clarify those pre-Dodd-Frank provisions, including those applicable to SEFs.¹¹ Part 9, however, which also applies to SEFs, was not addressed in this rulemaking.¹² As such, in regulation 37.2 of the SEF Final Rules, the Commission specified that SEFs shall comply with the requirements of part 9.¹³ Accordingly, for clarity purposes, this NPRM amends certain part 9 definitions and language which have not yet been addressed, to better integrate them into the post-Dodd-Frank regulatory regime.

II. Proposed Amendments to Regulations

A. Introduction

This Proposal contains amendments of three different types: ministerial, accommodating, and substantive. Most of the proposed amendments are purely ministerial—for instance, some of the proposed changes would update definitions in Commission regulation 9.2 to conform them to the CEA as amended by the Dodd-Frank

⁹ See generally Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) available at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>; see also Dodd-Frank Act section 721(a)(50), adding CEA section 1a(50), codified at 7 U.S.C. 1a(50).

¹⁰ 78 FR 33476 (June 4, 2013).

¹¹ 77 FR 66288 (Nov. 2, 2012).

¹² Id.

¹³ See 78 FR 33476, 33479 (June 4, 2013); 17 CFR 37.2.

Act as well as other sections of the Commission’s regulations. Furthermore, as noted above, the citations to part 8 in the current part 9 rules would be replaced with the appropriate citations to regulations, guidance, and acceptable practices from parts 37 and 38.¹⁴ In a similar vein, one of the proposed amendments to Commission regulation 9.1 would remove the reference to section 5a(a)(11) of the CEA, since this section was eliminated by the passage of the Commodity Futures Modernization Act of 2000 (“CFMA”).¹⁵

The proposed accommodating amendments do not impose any new obligations on SEFs; rather they clarify that SEFs, in addition to DCMs, must comply with part 9.¹⁶ This clarification would be accomplished by updating part 9’s definition of “exchange” to include SEFs and to add swaps to language discussing the types of transactions from which an exchange disciplinary action might arise. These amendments are more than ministerial because they require some judgment in drafting. Another example of an accommodating amendment is the proposed formal codification of the part 3 and part 9 advisories and the Commission’s delegation to the National Futures Association (“NFA”) of the responsibility to receive notice of final exchange disciplinary and access denial actions, in which the Commission encouraged exchanges to comply with the notice requirements in Commission regulation 9.11 (“9.11 notice”) by filing with the NFA.¹⁷

¹⁴ 17 CFR parts 37 and 38.

¹⁵ Pub. L. 106-554, 114 Stat. 2763, sec. 110 (2000).

¹⁶ 17 CFR part 9, §§ 37.2 and 38.2.

¹⁷ 64 FR 39913 (July 23, 1999) (“Part 9 Delegation”); 64 FR 39912 (July 23, 1999) (“Part 3 Advisory”); 64 FR 39915 (July 23, 1999) (“Part 9 Advisory”). As discussed more fully below in the preamble, the Part 9 Advisory permits exchanges to file 9.11 notices of final disciplinary or access denial actions with the Commission or with the NFA. The Part 9 Delegation gives the NFA authority to receive and process these notices on behalf of the Commission. Finally, the Part 3 Advisory relieves registrants and registrant

Additionally, the proposed amendment to Commission regulation 9.11(b)(3)(ii) would codify the clarification contained in the Part 9 Advisory that an exchange indicate in its notice of disciplinary or access denial actions whether the violation underlying the notice resulted in financial harm to any customers.¹⁸

The remaining proposed amendments are generally substantive in that they include an additional element required to be included in the contents of a 9.11 notice and a material revision to Commission regulation 9.13 which currently requires exchanges to post notice of final exchange disciplinary action on the exchange's premises.¹⁹ First, as part 9 pertains to both DCMs and SEFs which offer a number of varied products for trading, the proposed amendment to Commission regulation 9.11 would require exchanges to include the type of product (as applicable) involved in the adverse action in the contents of the final notice. Second, the proposed amendment to Commission regulation 9.13 would remove the requirement to post notice on the exchange's premises and instead require the exchange to post the notice on the exchange's website. Finally, as addressed above in the discussion of accommodating amendments, the Commission is proposing to codify the Part 9 Advisory. By specifying in the rule text that exchanges provide notice of final exchange disciplinary and access denial actions directly to the NFA, the Commission is eliminating the option for exchanges to file notice with the Commission.

B. Part 9

applicants from Commission regulation 3.31 Form 3-R reporting obligations in instances when the information to be reported is solely the result of an exchange disciplinary or access denial action.

¹⁸ 64 FR 39917 (July 23, 1999).

¹⁹ 17 CFR 9.11 and 9.13.

1. Commission Regulation 9.1: Scope of Rules

Commission regulation 9.1 governs the review by the Commission, pursuant to section 8c of the CEA, of any suspension, expulsion, disciplinary or access denial action, or other adverse action by an exchange.²⁰ As noted above, the Commission is proposing a ministerial amendment to regulation 9.1(b)(1) by removing the reference to section 5a(a)(11) of the CEA, since this section was eliminated by the passage of the CFMA.²¹

Commission regulation 9.1(b)(2) provides an exclusion from the part 9 regulations with respect to the Commission's review of summary actions imposed by an exchange for a minor penalty for the violation of exchange rules relating to decorum, attire, or timely submission of accurate records required for clearing or verifying each day's transactions or similar activities. The Commission proposes to amend regulation 9.1(b)(2) by replacing the reference to regulation 8.27 with a reference to part 37 guidance pertaining to violations of rules regarding timely submission of records and part 38 guidance pertaining to summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities.²²

Commission regulation 9.1(b)(3) provides an exclusion from the part 9 regulations concerning any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery, or a commodity option. The Commission proposes to amend regulation

²⁰ 7 U.S.C. 12c.

²¹ Pub. L. 106-554, 114 Stat. 2763, sec. 110 (2000).

²² The proposed references would be to (i) part 37 guidance, 17 CFR part 37, appendix B, Core Principle 2, paragraph (a)(13); and (ii) part 38 guidance, 17 CFR part 38, appendix B, Core Principle 13, paragraph (a)(6).

9.1(b)(3) by inserting “swap” at the end of the paragraph to account for swap transactions on a DCM or on a SEF as a result of the Dodd-Frank Act.²³ As noted above, the addition of “swap” language is a conforming amendment as it requires some judgment as to its inclusion.

Commission regulation 9.1(c) provides for the applicability of part 9 rules to matters filed with the Commission after August 6, 1987. In 1987, the part 9 rules in place at the time were superseded and Commission regulation 9.1(c) governed whether an existing matter would be subject to the pre- or post-1987 part 9 rules. Such determination is no longer necessary because no pre-1987 matters are pending before the Commission. As a result, the Proposal seeks to remove text from Commission regulation 9.1(c) that governs whether a matter would be subject to the pre- or post-1987 part 9 rules.

2. Commission Regulation 9.2: Definitions

The Commission proposes to revise the definition of four terms in regulation 9.2. First, the Commission proposes to revise the definition of “disciplinary action” in regulation 9.2(b) by deleting the reference to regulation 8.03(i). The Commission also proposes to remove the reference to “member of an exchange” and insert “person” in its place. The Commission believes it is necessary to expand the “disciplinary action” definition to account for instances where an exchange imposes sanctions against a person that is not a member of the exchange. The Commission’s proposal to include “person” in the “disciplinary action” definition is consistent with the statutory language found in Core

²³ Section 723(a)(3) of the Dodd-Frank Act added section 2(h)(8) of the CEA to require, among other things, that execution of swaps subject to the clearing requirement of section 2(h)(1) of the CEA must occur on either a DCM or a SEF.

Principle 2 for DCMs and section 8c(b) of the CEA, as amended by the Dodd-Frank Act.²⁴

Second, the Commission proposes to amend the definition of “exchange” in regulation 9.2(c) to include SEFs. This change would make clear that the Commission has the discretion to review adverse actions imposed by a SEF and clarify that SEFs are subject to all of the part 9 requirements.²⁵

Third, the Commission proposes to amend regulation 9.2(f) to expand the definition of “member of an exchange” to include any person who has trading privileges on an exchange. This change is necessary to conform the part 9 definition of “member” to the meaning set forth in section 1a(34) of the CEA and in § 1.3(q) of the Commission’s regulations.²⁶

²⁴ Section 735 of the Dodd-Frank Act amends section 5 of the CEA, including DCM Core Principle 2. Paragraph (B)—Capacity of Contract Market—of Core Principle 2 specifically requires that the board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market. Section 8c(b) of the CEA, 7 U.S.C. 12c(b), provides that the Commission may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, disciplined, or denied access to the exchange. In addition, section 8c(b) of the CEA provides that the Commission may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

²⁵ Id. The Commission notes that regulation 37.2 requires, among other things, that a SEF shall comply with the part 9 regulations. 17 CFR 37.2. Additionally, footnote 40 of the SEF Final Rules states “the term ‘exchange’ used in part 9 of the Commission’s regulations should be interpreted to include a SEF for purposes of applying the requirements of part 9 to a SEF.” 78 FR 33476, 33479 (June 4, 2013).

²⁶ Section 1a(34) of the CEA provides that the term “member” means, among other things, an individual, association, partnership, corporation, or trust having trading privileges on the registered entity. See also 17 CFR 1.3(q). By amending the definition of “member of an exchange” to include all persons with trading privileges, the Commission is clarifying that the appellate process and Commission review, as defined in part 9, would apply to all persons with trading privileges.

Fourth, the Commission proposes to amend the definition of “summary action” in regulation 9.2(k) by adding references to part 37 for SEFs and replacing the part 8 references with the relevant provisions from part 38.²⁷

3. Commission Regulation 9.4: Filing and Service; Official Docket

Commission regulation 9.4(a) describes the procedures for filing any document required by part 9 to be filed with the Commission Procedures Clerk, including proof of filing and proof of service. To ease the burden on parties, the Commission proposes to amend regulation 9.4(a) by replacing the requirement of a formal affidavit of service with the requirement that parties submit a signed “statement of service” that: (1) confirms that service has been made; (2) identifies each person served; (3) sets forth the date of service; and (4) recites the manner of service. The less formal and less burdensome statement of service effectively serves the same purpose as an affidavit of service (*i.e.*, promoting and assuring the full exchange of information among the parties by requiring service of submissions on all of the parties in the proceeding). Additionally, the Commission proposes to amend regulation 9.4(b)(1) to reduce the burden on parties by requiring an original and one copy (instead of two copies) of all documents filed with the Commission.

²⁷ Specifically, the proposed definition of “summary action” means a disciplinary action resulting in the imposition of a penalty on a person for violation of rules of the exchange permitted under the provisions of part 37, appendix B, Core Principle 2, paragraph (a)(10)(vi) or part 38, appendix B, Core Principle 13, paragraph (a)(4) (penalty for impeding progress of hearing); part 37, appendix B, Core Principle 2, paragraph (a)(14) or part 38, appendix B, Core Principle 13, paragraph (a)(7) (emergency disciplinary actions); part 37, appendix B, Core Principle 2, paragraph (a)(13) (summary fines for violations of rules regarding timely submission of records); or part 38, appendix B, Core Principle 13, paragraph (a)(6) (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities).

4. Commission Regulation 9.11: Form, Contents and Delivery of Notice of Disciplinary or Access Denial Action

Commission regulation 9.11(a) requires that whenever an exchange makes a decision, pursuant to which disciplinary action or access denial to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and to the Commission within 30 days thereafter. In 1999, the Commission delegated authority to the NFA to receive and process exchange disciplinary and access denial information (“Part 9 Delegation”).²⁸ Consequently, the NFA currently serves as the official custodian of records for exchange disciplinary filings. The Commission intends to again delegate authority to the NFA, via an updated order to be published concurrently with the final rule, to receive and process exchange disciplinary and access denial information. The Commission proposes to issue an updated order that includes specific duties delegated to the NFA, such as: (1) To process exchange disciplinary information; (2) to provide the Commission with access to a report summarizing all recent exchange disciplinary information; (3) to assist the Commission in enforcing exchange compliance with regulation 9.11 filing requirements; and (4) to serve as the official custodian of a database containing records of the exchanges’ disciplinary and access denial actions.

In 1999, concurrent with the Part 9 Delegation, the Commission published an advisory permitting exchanges to file 9.11 notices with the Commission or the NFA

²⁸ 64 FR 39913 (July 23, 1999). The NFA created the Background Affiliation Status Information Center (“BASIC”) system through which the public can access information pertaining to the types of violations committed, penalties imposed, the effective date of the action, and, in some cases, the text from the exchange’s decision.

("Part 9 Advisory").²⁹ While permitting filing with the Commission, the Part 9 Advisory encourages exchanges to file the required notice with the NFA and to do so electronically as the Commission believes such filing to be faster and more cost-effective for both the exchanges and the NFA. In an effort to codify the Part 9 Advisory and formally replace the regulation 9.11 requirement that written notice be provided to the Commission, the Commission proposes to amend regulation 9.11 to require that notice be provided to the NFA via the NFA's BASIC system and eliminate the option of filing the notice with the Commission.

Additionally, the Commission proposes to amend regulation 9.11(a) by replacing the reference to regulation 8.27 with a reference to part 38.³⁰

Commission regulation 9.11(b) sets forth the content that must be included in the disciplinary notice. The Commission proposes ministerial and conforming amendments to regulation 9.11(b) by inserting references to part 37, replacing the references to part 8 with references to part 38, codifying the Part 9 Advisory clarification that the contents of the notice include whether the violation resulted in customer harm, and specifying the content of notices provided to: (1) the person against whom the action was taken and (2) the NFA. Additionally, for the sake of clarity, the Commission is proposing to renumber regulation 9.11(b) by assigning separate paragraphs 9.11(b)(1) to specify the notice to be

²⁹ 64 FR 39915 (July 23, 1999).

³⁰ Specifically, the reference to Commission regulation 8.27 would be replaced with a reference to part 38, appendix B, Core Principle 13, paragraph (a)(6) (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities) for DCMs. Under the current rule and in the proposed rule, DCMs would not be required to report summary fines with respect to violations related to decorum or attire. Decorum or attire violations do not apply to SEFs. Accordingly, SEFs are required to report all disciplinary and access denial actions to BASIC.

provided by DCMs, 9.11(b)(2) to specify the notice to be provided by SEFs, and 9.11(b)(3) to detail the list of items to be included in the contents of the notice.

Furthermore, the Commission is proposing a substantive amendment to regulation 9.11(b)(3)(ii) by adding an additional element required to be included in the contents of the notice. Because part 9 pertains to both DCMs and SEFs, which offer a number of varied products for trading, the Commission believes that requiring exchanges to detail the type of product (as applicable) involved in the adverse action as part of the 9.11 notice will provide the Commission, market participants, the public, and other exchanges with greater transparency concerning where market abuses originate and whether the abuses are concentrated among certain product types.³¹ Specifically, proposed Commission regulation 9.11(b) provides that for purposes of part 9, the notice of disciplinary action or access denial action provided to the person against whom the action was taken may be a copy of a decision which accords with part 37 and part 38 regulations and guidance.³² Alternatively, the notice provided to the person against whom the action was taken must include: (i) the name of the individual against whom the action was taken; (ii) a statement of the reasons for the action, detailing the exchange product which was involved, as applicable, and whether the violation that resulted in the action also resulted in financial harm to any customers together with a list of any rules which the individual was charged with having violated or which otherwise serve as the basis of the

³¹ For example, a product trading on a DCM might be specified as a July 2016 Eurodollar future; while a product trading on a SEF may be a CDX North American High Yield Series 26 5 year.

³² The notice required by Commission regulation 9.11 may be satisfied by providing a copy of the final decision in accordance with part 37, appendix B, Core Principle 2, paragraph (a)(9) or part 38, appendix B, Core Principle 13, paragraph (a)(3) (settlement offers); Commission regulations 37.206(d) or 38.708 (decisions); or part 37, appendix B, Core Principle 2, paragraph (a)(11)(iv) or part 38, appendix B, Core Principle 13, paragraph (a)(5)(iv) (appeal decisions).

action; (iii) a statement of the exchange's conclusions and findings regarding each violation charged or, in the event of a settlement, a statement specifying those rule violations which the exchange believes were committed; (iv) the terms of the action; (v) the date the action was taken and the date the action will become effective; and (vi) a statement informing the party subject to the action of the availability of Commission review pursuant to section 8c of the CEA. Additionally, the Commission proposes to amend regulation 9.11(b) by requiring that notice provided to the NFA include items (i) - (v) immediately above.

Commission regulation 9.11(c) sets forth the delivery process that must be followed when providing notice of disciplinary action or access denial action to the person who was the subject to the action, and the filing process that must be followed when providing notice of the action to the Commission. The Commission proposes to amend regulation 9.11(c) by deleting instructions for filing notice with the Commission and replacing them with instructions for filing notice with the NFA. Specifically, proposed Commission regulation 9.11(c) provides that filing of the notice with the NFA is accomplished when an authorized exchange employee verifies the accuracy of the information entered into BASIC.

Commission regulation 9.11(d) sets forth the effect of delivery and filing by mail. The Commission proposes to amend regulation 9.11(d) by deleting instructions related to filing notices with the Commission by mail since proposed regulation 9.11(c) calls for notice filings be made to the NFA via BASIC instead of with the Commission by mail.

Commission regulation 9.11(e) sets forth the procedures for certifying the notice provided pursuant to Commission regulation 9.11. The Commission proposes to amend

regulation 9.11(e) by adding instructions for the certification of notice filed with the NFA. Specifically, proposed Commission regulation 9.11(e) provides that notice filed with the NFA is deemed certified when an authorized exchange employee verifies the accuracy of the information entered into BASIC.

5. Commission Regulation 9.12: Effective Date of Disciplinary or Access Denial Action

Pursuant to Commission regulation 9.12(a), a disciplinary action or access denial imposed by an exchange will not become effective until at least 15 days after the written notice prescribed by Commission regulation 9.11 is delivered to the person disciplined or denied access. However, an exchange may cause a disciplinary action to become effective prior to that time under certain circumstances that are identified in Commission regulation 9.12(a)(1) – (a)(4). The Commission proposes to amend regulation 9.12(a)(1) – (a)(4) by adding references to part 37 and replacing references to part 8 with references to part 38.³³

Pursuant to Commission regulation 9.12(b), an exchange that determines that a disciplinary action will become effective prior to the expiration of 15 days after written notice must notify the person disciplined in writing either personally or by telegram or other means of written telecommunication. The exchange must also immediately notify

³³ Specifically, the Commission proposes to amend regulation 9.12(a)(1) by adding a reference to part 37, appendix B, Core Principle 2, paragraph (a)(14) (emergency disciplinary actions) and replacing the reference to regulation 8.25 with a reference to Part 38, appendix B, Core Principle 13, paragraph (a)(7) (emergency disciplinary actions). In regulation 9.12(a)(2), the Commission proposes to add a reference to part 37, appendix B, Core Principle 2, paragraph (a)(10)(vi) (hearings) and replace the reference to regulation 8.17(b) with a reference to part 38, appendix B, Core Principle 13, paragraph (a)(4) (hearings). The Commission proposes to amend regulation 9.12(a)(3) by adding a reference to part 37, appendix B, Core Principle 2, paragraph (a)(13) (summary fines for violations of rules regarding timely submission of records) and replacing the reference to regulation 8.27 with a reference to part 38, appendix B, Core Principle 13, paragraph (a)(6) (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities).

the Commission by telegram or other means of written telecommunication. In order to modernize regulation 9.12(b), the Commission proposes to replace references to “telegram or other means of written telecommunication” with the term “email” and provide a Commission email address where notice of the early effective date can be sent by the exchange.

6. Commission Regulation 9.13: Publication of Notice

Pursuant to Commission regulation 9.13, whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by Commission regulation 9.11(b). An exchange also must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of Commission regulation 9.12 by posting a notice in a conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days. The exchange must also maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice.

The Commission notes that regulation 9.13 was published in 1987, at a time when futures trading occurred primarily in person in the exchange’s trading pits and on exchange premises. Therefore, posting notice of disciplinary action or access denial action on exchange premises, where it could be readily viewed by market participants, was an effective form of publicizing the disciplinary action. Today, most trading on DCMs and some of the trading on SEFs occurs by electronic execution. While some SEF trading is executed via a voice component, both electronic and voice execution occurs

between market participants that are in geographically distinct locations and generally do not set foot on exchange premises. Consequently, posting a notice of disciplinary action on the premises of an exchange does little to publicize a disciplinary action. In an effort to modernize Commission regulation 9.13, and to provide better notice of a disciplinary action or an access denial action, the Commission proposes to amend regulation 9.13 to require such notice be posted on an exchange's website to which its members, market participants, and the public regularly have access.³⁴ In addition, to better inform market participants and maintain a public record of disciplinary action taken by an exchange, the Commission proposes to amend regulation 9.13 to require that such notice of a disciplinary action or an access denial action be maintained and readily available on an exchange's website.³⁵ As a result, the existing requirement to maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice would be eliminated.

The Commission recognizes that NFA BASIC presently acts as the central repository of all disciplinary action taken by DCMs and SEFs. However, such

³⁴ The Commission acknowledges that many DCMs have already adopted more modern methods to publicize notices of disciplinary action. For example, the CME Group DCMs (Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME"), Commodity Exchange, Inc., ("COMEX"), and New York Mercantile Exchange, Inc. ("NYMEX")) and ICE Futures U.S. notify subscribers of exchange disciplinary postings via email. The Commission also notes that the proposed amendment generally tracks the Securities and Exchange Commission's ("SEC") standards for Release of Disciplinary Complaints, Decisions and Other Information in Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 8313, in which FINRA, with SEC approval, has established its standard for releasing to the public a copy of FINRA issued disciplinary complaints, decisions, and other disciplinary information. See FINRA Rule 8313 "Release of Disciplinary Complaints, Decisions and Other Information," available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3892. See also SEC Release No. 34-69825; File No. SR-FINRA-2013-018 (June 21, 2013).

³⁵ Some DCMs currently maintain records of disciplinary action on their websites. For example, CBOE Futures Exchange, LLC maintains a disciplinary decision database on its website that allows the public to review disciplinary decisions dating back to 2012. The Commission notes that in the securities industry, the New York Stock Exchange maintains disciplinary notices as far back as 1972.

disciplinary information cannot be queried by a specific exchange. In general, the Commission believes that greater access to exchange disciplinary actions provides valuable guidance and information to market participants and potential market participants. Also, maintaining disciplinary actions on an exchange's public website can serve to further deter and prevent future misconduct and to improve overall compliance among market participants. In addition, market participants may use such information to educate themselves as to compliance matters, potential violations and related sanctions, as well as to revise their own compliance procedures involving similar business practices. Further, any market participant facing allegations of rule violations may access an exchange's existing disciplinary decisions to gain greater insight on related facts and sanctions. Finally, in an effort to enhance access to disciplinary information, the Commission anticipates that upon the effective date of the final part 9 rules, it will include links on its SmartCheck website to each exchange's website for posting notice of disciplinary action or access denial action.³⁶

7. Commission Regulation 9.24: Petition for Stay Pending Review

Commission regulation 9.24 provides the procedures that a person disciplined or denied access by an exchange must follow in the event that a person petitions the Commission to stay a disciplinary or access denial action. The Commission proposes to amend regulation 9.24(a)(2) by adding a reference to part 37 and replacing the reference

³⁶ In November 2014, the CFTC launched the SmartCheck website. It connects investors to tools to check the registration, license, and disciplinary history of certain financial professionals. This collection of tools allows the responsible investor to confirm the credentials of investment professionals, uncover any past disciplinary history, and stay ahead of scam artists with news and alerts.

to part 8 with a reference to part 38.³⁷ In addition, the Commission proposes to remove the reference to regulation 8.26, which provided for emergency action hearing procedures, from regulation 9.24(a)(2), as the part 37 and 38 emergency disciplinary action guidance (cited above) provides for emergency action hearing procedures.

8. Commission Regulation 9.31: Commission Review of Disciplinary or Access Denial Action on its Own Motion

Commission regulation 9.31(a) permits the specified Divisions at the Commission to request that an exchange file the record of an exchange proceeding and other documents applicable to an exchange proceeding with such Divisions, upon review of the exchange notice specified in Commission regulation 9.11, in instances where the person disciplined or denied access by the exchange has not appealed the exchange decision to the Commission. The Commission proposes to amend regulation 9.31(a) to delete the reference to the Division of Clearing and Risk from the first sentence. This provision had previously been amended to replace an earlier reference to the Division [of] Clearing and Intermediary Oversight with references to the Division of Swap Dealer and Intermediary Oversight and the Division of Clearing and Risk, as the successors to the Division of Clearing and Intermediary Oversight. Given the current organizational responsibilities of the Divisions, it is not necessary to include the Division of Clearing and Risk in Commission regulation 9.31(a). The Division of Clearing and Risk does not typically review notices of exchange disciplinary or access denial actions filed pursuant to Commission regulation 9.11 but instead reviews reports regarding rule enforcement

³⁷ Specifically, the Commission proposes to add a reference to part 37, appendix B, Core Principle 2, paragraph (a)(14) (emergency disciplinary actions) and replace the reference to regulation 8.25 with a reference to part 38, appendix B, Core Principle 13, paragraph (a)(7) (emergency disciplinary actions).

activities and sanctions imposed against clearing members by registered derivatives clearing organizations pursuant to Commission regulations 39.17(a)(3) and 39.19(c)(4)(xi). The Commission also proposes to amend regulation 9.31(a) by adding language that requires the exchange to provide information to the requesting Division in the manner requested by the Division and to the person who is the subject of the disciplinary or access denial action in the manner prescribed by regulation 9.11(c).

The Commission also proposes to amend regulation 9.31(b) to replace reference to the “Commission” with “NFA” in the second sentence. Such replacement is necessary to conform Commission regulation 9.31(b) to proposed changes to Commission regulation 9.11 that call for a notice of disciplinary or access denial action to be provided to the NFA.

9. Minor Changes to Commission Regulations 9.3, 9.4, 9.8, and 9.9

The Commission proposes to amend regulation 9.3 by correcting the referenced title of regulation 12.7 to read “Ex parte communications in reparation proceedings.” The Commission also proposes to amend regulations 9.4(b)(4) and (c)(3), 9.8(1), and 9.9(b)(3) and (4) to make them gender neutral.

C. Part 3

1. Commission Regulation 3.31: Deficiencies, Inaccuracies, and Changes to be Reported

Pursuant to Commission regulation 3.31, an applicant or registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a non-natural person or leverage transaction merchant shall promptly

correct any deficiency or inaccuracy in Form 7-R or Form 8-R which has rendered the information contained therein non-current or inaccurate. These corrections must be made on Form 3-R and filed in accordance with the form's instructions (such instructions presently require that Form 3-R be filed with the NFA).

In 1999, concurrent with the Part 9 Delegation and Part 9 Advisory, the Commission issued an advisory pertaining to part 3 of the Commission's regulations ("Part 3 Advisory"). The Part 3 Advisory relieves registrants and applicants for registrant status from filing a Form 3-R, as required under Commission regulation 3.31, if the information to be reported is solely the result of an exchange disciplinary or access denial action.³⁸ The Part 3 Advisory also explains that the Commission has: (1) permitted exchanges (via the Part 9 Advisory) to file either electronic or written 9.11 notices with the NFA instead of the Commission and (2) delegated to the NFA (via the Part 9 Delegation) the duty to receive and process exchange disciplinary and access denial action information filed by the exchanges in accordance with Commission regulation 9.11. The Commission further explained that, as a result of the Part 9 Advisory and Part 9 Delegation, the NFA possesses the exchange disciplinary and access denial action information that registrants and applicants for registration status would otherwise be required to include in Form 3-R. Therefore, to avoid duplicative reporting, the Part 3 Advisory advises all individuals and entities subject to Commission regulation 3.31 that they are relieved from Commission regulation 3.31 reporting obligations resulting from an exchange disciplinary or access denial action and reported by an exchange pursuant to a 9.11 notice.

³⁸ 64 FR 39912 (July 23, 1999).

As discussed above, the Commission intends to again delegate authority to the NFA to receive and process exchange disciplinary and access denial information. Additionally, the Commission seeks to replace the Part 9 Advisory by proposing to amend regulation 9.11 to require that notice be provided to the NFA via the NFA's BASIC system. Similarly, the Commission intends to codify the Part 3 Advisory by proposing to amend the end of the first sentence of regulation 3.31(a)(1) with language that relieves the following applicants or registrants from filing a Form 3-R if the information to be reported is solely the result of an exchange disciplinary or access denial action: futures commission merchants ("FCMs"), retail foreign exchange dealers ("RFEDs"), swap dealers ("SDs"), major swap participants ("MSPs"), commodity trading advisors ("CTAs"), commodity pool operators ("CPOs"), introducing brokers ("IBs"), floor traders ("FTs") that are non-natural persons or leverage transaction merchants ("LTMs").

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.³⁹ The part 9 rules proposed by the Commission will impact all SEFs and DCMs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in

³⁹ 5 U.S.C. 601 et seq.

accordance with the RFA.⁴⁰ The Commission has also determined that DCMs and SEFs are not small entities for the purpose of the RFA.⁴¹

The part 3 rules proposed herein would affect certain applicant or registrant FCMs, RFEDs, SDs, MSPs, CTAs, CPOs, IBs, FTs who are non-natural persons, and LTMs who would no longer have to file a Form 3-R if the information to be reported is solely the result of an exchange disciplinary or access denial action. The Commission has previously determined that FCMs, RFEDS, SDs, MSPs, CPOs, and LTMs are not small entities for purposes of the RFA.⁴² Therefore, the requirements of the RFA do not apply to those entities. With respect to CTAs, FTs, and IBs, the Commission has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular Commission regulation at issue.⁴³ As certain of these registrants may be small entities for purposes of the RFA, the Commission has considered whether this Proposal would have a significant impact on these registrants.

The proposed amendment to Commission regulation 3.31 is technical and not substantive in nature. In 1999, the Commission published the Part 3 Advisory which relieved all applicants and registrants from filing a Form 3-R, as required under

⁴⁰ See 47 FR 18618 through 18621 (Apr. 30, 1982).

⁴¹ See 47 FR 18618, 18619 (Apr. 30, 1982) (DCMs); 78 FR 33548 (June 4, 2013) (SEFs).

⁴² See Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (FCMs and CPOs); Leverage Transactions, 54 FR 41068 (Oct. 5, 1989) (LTMs); Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55410, 55416 (Sept. 10, 2010) (RFEDs); and Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs).

⁴³ See 47 FR 18620 (Apr. 30, 1982) (CTAs); Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies, 58 FR 19575, 19588 (Apr. 15, 1993) (FTs); and Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35276 (Aug. 3, 1983) (IBs).

Commission regulation 3.31, if the information to be reported is solely the result of an exchange disciplinary or access denial action.⁴⁴ As discussed in the preamble, the proposed amendment codifies the filing relief set forth in the Part 3 Advisory and would not impose any new regulatory obligations on any registrant, including CTAs, FTs, and IBs. The Commission does not, therefore, expect small entities to incur any additional costs as a result of this Proposal. Consequently, the Commission finds that no significant economic impact on small entities will result from this Proposal.

Accordingly, the Chairman, on behalf of the Commission pursuant to 5 U.S.C. 605(b), certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Introduction

The Paperwork Reduction Act of 1995 (“PRA”) imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA.⁴⁵ An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (“OMB”). This NPRM contains recordkeeping and reporting requirements that are collections of information within the meaning of the PRA.

The Proposal contains provisions that would qualify as collections of information, for which the Commission has already sought and obtained control numbers from the

⁴⁴ 64 FR 39912 (July 23, 1999).

⁴⁵ 44 U.S.C. 3501 et seq.

OMB. The titles for these collections of information are “Part 38–Core Principles and Other Requirements for Designated Contract Markets” (OMB Control Number 3038–0052) and “Part 37– Core Principles and Other Requirements for Swap Execution Facilities” (OMB Control Number 3038–0074). If adopted, responses to these collections of information would be mandatory.

As discussed below, the Commission is not seeking to amend information collections 3038–0052 or 3038–0074 because the Commission believes that the rule modifications proposed herein will not impose any new information collection requirements that require approval from OMB under the PRA. Accordingly, the Commission invites public comment on the accuracy of its estimate regarding the impact of proposed Commission regulation 9.11 on collections 3038–0052 and 3038–0074 and its determination that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the Proposal.⁴⁶

2. Section 9.11 Amendments

As discussed above, the proposed Commission regulation 9.11 amendments are primarily technical and not substantive in nature. Commission regulation 9.11 currently requires that whenever an exchange makes a decision, pursuant to which disciplinary action or access denial to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and to the Commission within 30 days thereafter. Among the proposed amendments to regulation

⁴⁶ For collection 3038–0052, see OMB Control No. 3038–0052, available at <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0052>. For collection 3038–0074, see OMB Control No. 3038–0074, available at <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0074>.

9.11, the Commission is clarifying the existing rules to formally incorporate SEFs under the requirements and therefore include references to the part 37 SEF regulations.⁴⁷

Furthermore, the Commission is proposing to add an additional element required to be included in the contents of the notice specifying which product type (as applicable) was involved in the adverse action. The Commission believes that by adding such additional element to the contents of the notice its impact on the burden would be de minimis. For example, to describe a product trading on a DCM, the notice might include the description, “July 2016 Eurodollar future;” while a product trading on a SEF may be a “CDX North American High Yield Series 26 5 year.” Additionally, as a result of the Commission’s removal of part 8, the Commission is proposing to remove all cross-references in regulation 9.11 to the part 8 regulations and replace these references with applicable regulations, guidance, and acceptable practices from parts 37 and 38.⁴⁸ Finally, in 1999, the Commission published the Part 9 Advisory permitting exchanges to file 9.11 notices with the Commission or with the NFA.⁴⁹ In an effort to codify the Part 9 Advisory and formally replace the regulation 9.11 requirement that written notice be provided to the Commission, the Commission proposes to amend regulation 9.11 to require notice be provided to the NFA via the BASIC system.

⁴⁷ 17 CFR part 37. As explained earlier in the preamble, SEFs are already subject to the part 9 reporting requirements under regulation 37.2, in which the Commission specified that SEFs shall comply with the requirements of part 9.

⁴⁸ Removal of part 8 at 77 FR 66288, (Nov. 2, 2012); and 17 CFR parts 37 and 38.

⁴⁹ 64 FR 39915 (July 23, 1999).

3. Clarification of Collections 3038–0052 and 3038–0074

The Commission notes that all DCMs and SEFs are already subject to the part 9 reporting requirements.⁵⁰ First, part 9 applies to DCMs, by explicitly defining “exchange” in Commission regulation 9.2(c) for purposes of the rules as “any board of trade which has been designated as a contract market.”⁵¹ Furthermore, former regulation 38.2, which was adopted by the Commission on August 10, 2001, specifically required DCMs to comply with part 9 (“2001 DCM Rulemaking”).⁵² In the 2001 DCM Rulemaking, the Commission requested an OMB control number for part 38 to account for the reporting requirements, including part 9.⁵³ The text of Commission regulation 38.2 that specifically required DCMs to comply with part 9 was amended on June 19, 2012, and currently provides that DCMs shall comply with all applicable regulations under Title 17 of the Code of Federal Regulations, except for certain exempt provisions.⁵⁴ Part 9 is not included in the list of exempt provisions. Accordingly, Commission regulation 38.2 still requires that DCMs comply with the part 9 rules, and therefore, the Commission regulation 9.11 reporting requirements. Since the proposed amendments to Commission regulation 9.11 are primarily technical, the Commission believes that these amendments would not impact the current burden estimates in the DCM 3038-0052 collection.

⁵⁰ 17 CFR part 9 and 38.2 [DCMs]; 17 CFR 37.2 [SEFs].

⁵¹ 17 CFR 9.2(c).

⁵² 66 FR 42277 (August 10, 2001).

⁵³ *Id.* at 42268.

⁵⁴ 77 FR 36697 (June 19, 2012); 17 CFR 38.2.

As noted above, SEFs are also subject to the part 9 reporting requirements.⁵⁵ The pertinent reporting burden of Commission regulation 9.11 for SEFs is contained in Commission regulation 37.2, which was adopted on June 4, 2013.⁵⁶ Among the applicable provisions with which SEFs must comply, Commission regulation 37.2 explicitly lists part 9.⁵⁷ Because the proposed amendments to Commission regulation 9.11 are primarily technical, the Commission believes these amendments would not impact the current burden estimates in the SEF 3038-0074 collection.⁵⁸

4. Information Collection Comments

The Commission invites comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission will consider public comments on such proposed requirements in: (1) evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use; (2) evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhancing the quality, utility, and clarity of the information proposed to be collected; and (4) minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques.

⁵⁵ 17 CFR 37.2.

⁵⁶ 78 FR 33476 (June 4, 2013).

⁵⁷ 17 CFR 37.2.

⁵⁸ Supra note 46.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160 or from <http://RegInfo.gov>. Persons desiring to submit comments on the proposed information collection requirements should send those comments to: The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer of the Commodity Futures Trading Commission; (202) 395-6566 (fax); or OIRAsubmissions@omb.eop.gov (email). Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between thirty (30) and sixty (60) days after publication of the Proposal in the Federal Register. Therefore, a comment to OMB is best assured of receiving full consideration if OMB (as well as the Commission) receives it within thirty (30) days of publication of the Proposal.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.⁵⁹ Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the

⁵⁹ 7 U.S.C. 19(a).

markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The Commission considers the costs and benefits associated with the proposed amendments, including updating the pre-existing regulatory framework to incorporate SEFs, removing references to part 8 of the Commission's regulations, and revising the reporting and notice requirements for DCMs and SEFs. The Commission compares the costs and benefits of this rulemaking against a baseline of the status quo, the current requirements under part 3 and part 9. As discussed more fully below, the Commission preliminarily believes that the only new cost that would be imposed by the Proposal is the requirement in Commission regulation 9.13 for DCMs and SEFs to publish and maintain disciplinary notices on their respective websites.

2. Part 3 and Part 9 Technical Amendments

As explained above, the proposed amendments to part 3 and part 9 are primarily technical in nature. The Commission believes that these technical amendments will not impose any new costs on DCMs, SEFs, or market participants. For example, among the proposed changes, the Commission is clarifying the definition of "exchange" to include SEFs and updating the references to part 8, which was removed by the Commission in 2012, to instead cite to parallel provisions now contained in parts 37 and 38.⁶⁰

Furthermore, the proposed revisions to Commission regulations 3.31 and 9.11 codify existing reporting procedures which were already authorized by the Commission in the

⁶⁰ Removal of part 8 at 77 FR 66288 (Nov. 2, 2012); and 17 CFR parts 37 and 38. See, e.g., 17 CFR part 37 appendix B, Core Principle 2, paragraph (a)(13) and part 38, appendix B, Core Principle 13, paragraph (a)(6).

Part 3 Advisory and Part 9 Advisory.⁶¹ These proposed amendments do not substantively change the requirements that the Commission currently imposes on DCMs and SEFs.⁶² Rather, instead of providing the 9.11 notices to the Commission, as required under the current part 9 rules, proposed regulation 9.11 will instead instruct exchanges to provide the notices to the NFA, as is permitted as an alternative method of compliance under the Part 9 Advisory.⁶³

There is also the ministerial benefit to codifying the Part 3 and Part 9 Advisories. Advisories are staff action and are not rules that have been promulgated by the Commission subject to public notice and comment. Thus, this rulemaking will achieve the benefit of codifying the Part 3 Advisory and Part 9 Advisory into rules.

3. Summary of Proposed Amendments to Commission Regulation 9.13–
Publication of Notice

As discussed above, proposed Commission regulation 9.13 would require all DCMs and SEFs to maintain and make readily accessible final notices of exchange disciplinary and access denial actions on their websites.⁶⁴ This new requirement would replace the existing requirement in Commission regulation 9.13 that exchanges publish the notice in a conspicuous place on the exchange's premises.

⁶¹ Part 9 Advisory: 64 FR 39915 (July 23, 1999); Part 3 Advisory: 64 FR 39912 (July 23, 1999).

⁶² Supra note 46. As noted above in the PRA, the Commission believes the proposed substantive amendment to add an additional element required to be included in the contents of a 9.11 notice will not materially impact the costs imposed by this NPRM.

⁶³ 17 CFR 9.11.

⁶⁴ 17 CFR 9.13.

a. Costs

The Commission believes that posting final disciplinary and access denial notices to exchange websites will slightly increase the costs for DCMs and SEFs. The Commission notes that the additional costs incurred by DCMs and SEFs would be offset in part due to the proposed amendment in Commission regulation 9.13 that would remove the requirement of posting disciplinary and access denial notices on the premises of the respective DCM or SEF. In order to estimate the additional costs, the Commission queried the NFA's BASIC to determine the total number of disciplinary and access denial actions filed by DCMs in 2015. Because SEFs did not post any disciplinary or access denial actions to BASIC in 2015, the numbers below reflect the disciplinary and access denial actions filed by the 15 DCMs presently registered with the Commission and provide the basis for estimating the number of disciplinary and access denial actions for SEFs annually.⁶⁵

Total number of reported disciplinary and access denial actions in BASIC by all DCMs in 2015: 452

In order to estimate the costs for SEFs, the Commission calculated the average number of disciplinary and access denial actions filed by DCMs, excluding the four DCMs with the largest number of reported disciplinary and access denial actions.⁶⁶ The Commission notes that SEFs are relatively new entities with significantly less volume and fewer participants than the four DCMs that reported the highest number of

⁶⁵ As of November 9, 2016, 10 summary fines had been assessed by a total of four SEFs. The notices for such summary fines have been posted to BASIC. Because the Commission did not have a complete year of data for 2016, the Commission used the 2015 numbers of disciplinary and access denial actions to calculate the costs.

⁶⁶ The DCMs with largest number of reported disciplinary and access denial actions are: ICE Futures U.S., CME, NYMEX, and CBOT.

disciplinary and access denial actions.⁶⁷ Therefore, the Commission preliminary believes that the average number of disciplinary and access denial actions reported by the 11 other DCMs in 2015 provide a more appropriate comparison with respect to estimating the number of disciplinary and access denial actions for SEFs annually. As the SEFs mature, in terms of the number of participants and volume, the Commission anticipates that the number of disciplinary and access denial actions may increase accordingly.

Total number of reported disciplinary and access denial actions in BASIC by DCMs in 2015, excluding the 4 DCMs with the largest number of reported actions: 88

Average number of reported disciplinary and access denial actions in BASIC per DCM in 2015, excluding the 4 DCMs with the largest number of reported actions: 8

Currently, there are a total of 23 registered SEFs with the Commission. The Commission estimates that each SEF would report at least eight disciplinary and access denial actions annually in BASIC for an aggregate total of 184 disciplinary and access denial actions for all SEFs per year (eight actions multiplied by 23 SEFs equals 184 actions). Thus, the total number of exchange disciplinary and access denial actions per year for all DCMs and SEFs is estimated to be 636 (184 actions for SEFs plus the 452 actions for DCMs equals 636 total actions per year). The Commission anticipates each DCM and SEF would spend an additional 15 minutes per disciplinary notice to post on the exchange's website above the current requirement of posting the notice on the

⁶⁷ 78 FR 33476 (June 4, 2013). The SEF Final Rules implemented the SEF framework enacted by section 733 of the Dodd-Frank Act; 7 U.S.C. 7b-3.

exchange's premises. Accordingly, the aggregate new burden of Commission regulation 9.13 is estimated to be 159 hours per year for the 15 DCMs and 23 SEFs (15 minutes multiplied by 636 anticipated actions per year equals 159 burden hours).

The Commission expects that a compliance officer employed by the exchange will be posting the disciplinary or access denial action notices to the exchange website. According to recent Bureau of Labor Statistics National Occupational Employment and Wage Estimates, the mean hourly wage of an employee under occupation code 13-1041, "Compliance Officers," that is employed by the "Securities and Commodity Exchanges" industry is \$46.01. Because DCMs and SEFs can be large, specialized entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly wage of \$50 per hour.⁶⁸ Accordingly, the burden associated with posting the disciplinary notices on exchange websites will total approximately \$7,950 per year for all of the 38 DCMs and SEFs, (\$50 multiplied by the anticipated 159 burden hours equals \$7,950 per year).⁶⁹

b. Benefits

The Commission preliminarily believes that greater access to information regarding exchange disciplinary and access denial actions provides valuable guidance and information to exchange members, market participants, and the public. Releasing disciplinary information to the public can serve to deter and prevent future misconduct and to improve overall compliance standards in the futures and swaps industry. It also

⁶⁸ Bureau of Labor Statistics, Occupational Employment and Wages: 13-1041 Compliance Officers, (May 2014), available at <http://www.bls.gov/oes/current/oes131041.htm>.

⁶⁹ The Commission acknowledges that requiring exchanges to post final notices of disciplinary and access denial actions on their websites may necessitate additional bandwidth. The Commission anticipates that any increased costs due to added bandwidth would be insignificant in its calculation of the total annual burden associated with this Proposal.

allows customers to consider member firms' and traders' disciplinary histories when considering whether to engage in business with them. In addition, firms may use such information to educate their traders and associated persons as to compliance matters, highlighting potential violations and related sanctions. Further, any firm or individual facing allegations of rule violations may access existing disciplinary decisions to gain greater insight on related facts and sanctions. The Commission believes that the added deterrence of publishing the disciplinary notices on the exchange websites and the enhanced investigative and educational benefits of making such information public will ultimately decrease the incidents of wrongdoing and market abuses which will benefit both market participants and the general public.

c. Section 15(a) Factors

As noted above, section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

(1) Protection of market participants and the public. The Commission preliminarily believes that market participants and the public will benefit from the ministerial and conforming amendments proposed herein since they eliminate obsolete, vestigial provisions and references that otherwise could be construed to give rise to confusing inconsistencies between the Commission's regulations and the provisions of the CEA. Furthermore, the Commission preliminarily believes that the proposed substantive amendment to regulation 9.13, which would require exchanges to publish notice of final disciplinary and access denial actions on exchange websites, would increase transparency of exchange disciplinary actions and serve as a deterrence of future market abuses. These enhancements allow for operational efficiencies in oversight,

increased deterrence from market abuses, and greater transparency of the exchange disciplinary process. Therefore, the Commission anticipates that the amendment to regulation 9.13 would result in improved protection of market participants and the public.

(2) The efficiency, competitiveness, and financial integrity of the markets. The requirement that exchanges publish disciplinary notices and access denial actions on their website is intended to improve the operational efficiency, competitiveness and financial integrity of the futures and swaps markets by enabling the public and those who access the exchange website to be made aware of any disciplinary and access denial actions imposed by the exchange. As discussed above, the vast majority of trading no longer occurs in person on the exchange's premises. The Commission believes that the current requirement in regulation 9.13 of posting disciplinary and access denial actions on the exchange's premises provides little to no public notice of these actions. By publishing the notice on the exchange's website, the Commission believes that the efficiency, competitiveness and financial integrity of the markets would be bolstered by the deterrent effect achieved by posting the notice in a publicly accessible medium.

(3) Price discovery. The Commission has not identified an impact on price discovery as a result of the proposed regulations, but seeks comment as to any potential impact. Will the proposed regulations impact, positively or negatively, the price discovery process?

(4) Sound risk management practices. The Commission has not identified an impact on risk management practices as a result of the proposed regulations, but seeks comment as to any potential impact. Will the proposed regulations impact, positively or negatively, sound risk management practices?

(5) Other public interest considerations. The Commission has not identified any other public interest considerations, but welcomes comment on whether this Proposal would promote public confidence in the integrity of derivatives markets by making notice of exchange disciplinary and access denial actions more readily available to the public. Will this Proposal impact, positively or negatively, any unidentified matter of interest to the public?

d. Request for Comments

The Commission seeks additional information regarding the costs and benefits of the Proposal. Beyond the specific questions interspersed throughout its discussion above, the Commission requests comment on all aspects of its consideration of costs and benefits, including: identification and assessment of any costs and benefits not discussed therein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the benefits and costs of the proposed rules; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's consideration of costs and benefits. Commenters also may suggest other alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and provide a superior cost-benefit profile.

IV. Request for Comments

The Commission requests comment on all aspects of the Proposal. Commenters are specifically encouraged to include any considerations related to the Commission's proposed notice and order delegating regulation 9.11 authority to the NFA.

List of Subjects

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

17 CFR Part 9

Administrative practice and procedure, Commodity exchanges, Commodity futures.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b-1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of Pub. L. 111-203, 124 Stat. 1376.

2. In § 3.31, revise paragraph (a)(1) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a non-natural person or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Form 8-R that no longer renders accurate and current the information contained therein, with the exception of any change that requires withdrawal from registration under § 3.33 or any change resulting from an exchange disciplinary or access denial action. Each such correction shall be

prepared and filed in accordance with the instructions thereto to create a Form 3-R record of such change.

* * * * *

**PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY,
ACCESS DENIAL OR OTHER ADVERSE ACTIONS**

3. The authority citation for part 9 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b-1, 6c, 7, 7a-2, 7b-3, 8, 9, 9a, 12, 12a, 12c, 13b, 16a, 18, 19, 21.

4. In § 9.1, revise paragraphs (b) and (c) to read as follows:

§ 9.1 Scope of rules.

* * * * *

(b) Matters excluded. This part does not apply to and the Commission will not accept notices of appeal, or petitions for stay pending review, of:

(1) Any arbitration proceeding, regardless of whether the proceeding involved a controversy between members of an exchange;

(2) Except as provided in §§ 9.11(a), 9.11(b)(3)(i) through (v), 9.11(c), 9.12(a) and 9.13 (concerning the notice, effective date and publication of a disciplinary or access denial action), any summary action permitted under the provisions of part 37, appendix B, Core Principle 2, paragraph (a)(13) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(6) of this chapter imposing a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and

(3) Any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery, a commodity option, or a swap.

(4) The Commission will, upon its own motion or upon motion filed pursuant to § 9.21(b), promptly notify the appellant and the exchange that it will not accept the notice of appeal or petition for stay of matters specified in this paragraph. The determination to decline to accept a notice of appeal will be without prejudice to the appellant's right to seek alternate forms of relief that may be available in any other forum.

(c) Applicability of these part 9 rules. Unless otherwise ordered, these rules will apply in their entirety to all appeals, and matters relating thereto.

5. In § 9.2, revise paragraphs (b), (c), (f), and (k) to read as follows:

§ 9.2 Definitions.

* * * * *

(b) Disciplinary action means any suspension, expulsion or other penalty imposed on a person by an exchange for violations of rules of the exchange, including summary actions.

(c) Exchange means a swap execution facility or any board of trade which has been designated as a contract market.

* * * * *

(f) Member of an exchange means

(1) Any person who is admitted to membership or has been granted membership privileges on an exchange; any employee, officer, partner, director or affiliate of such

member or person with membership privileges including any associated person; and any other person under the supervision or control of such member or person with membership privileges; or

(2) Any person who has trading privileges on an exchange.

* * * * *

(k) Summary action means a disciplinary action resulting in the imposition of a penalty on a person for violation of rules of the exchange permitted under the provisions of part 37, appendix B, Core Principle 2, paragraph (a)(10)(vi) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(4) (penalty for impeding progress of hearing); part 37, appendix B, Core Principle 2, paragraph (a)(14) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(7) (emergency disciplinary actions) of this chapter; part 37, appendix B, Core Principle 2, paragraph (a)(13) (summary fines for violations of rules regarding timely submission of records) of this chapter; or part 38, appendix B, Core Principle 13, paragraph (a)(6) (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities) of this chapter.

6. Revise § 9.3 to read as follows:

§ 9.3 Provisions referenced.

Except as otherwise provided in this part, the following provisions of the Commission's rules relating to reparations contained in part 12 of this chapter apply to this part: § 12.3 (Business address; hours); § 12.5 (Computation of time); § 12.6 (Extensions of time; adjournments; postponements); § 12.7 (Ex parte communications in reparation proceedings); and § 12.12 (Signature).

7. In § 9.4, revise paragraphs (a), (b), and (c) to read as follows:

§ 9.4 Filing and service; official docket.

(a) Filing with the Proceedings Clerk; proof of filing; proof of service. Any document that is required by this part to be filed with the Proceedings Clerk must be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing. A party must use a means of filing which is at least as expeditious as that used in serving that document upon the other parties. Proof of filing must be made by attaching to the document for filing a statement of service as provided in § 10.12(a)(6) of this chapter.

(b) Formalities of filing—(1) Number of copies. Unless otherwise specifically provided, an original and one conformed copy of all documents filed with the Commission in accordance with the provisions of this part must be filed with the Proceedings Clerk.

(2) Title page. All documents filed with the Proceedings Clerk must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) Paper, spacing, type. All documents filed with the Proceedings Clerk must be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on

the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) Signature. The original copy of all papers must be signed in ink by the person filing the same or by his or her duly authorized agent or attorney.

(c) Service—(1) General requirements. All documents filed with the Proceedings Clerk must, at or before the time of filing, be served upon all parties. A party must use a means of service which is at least as expeditious as that used in filing that document with the Proceedings Clerk. One copy of all motions, petitions or applications made in the course of the proceeding, all notices of appeal, all briefs, and letters to the Commission or an employee thereof must be served by a party upon all other parties.

(2) Manner of service. Service may be either personal or by mail. Service by mail is complete upon deposit of the document in the mail. Where service is effected by mail, the time within which the person served may respond thereto will be increased by three days.

(3) Designation of person to receive service. The first document filed in a proceeding by or on behalf of any party must state on the first page the name and postal address of the person who is authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents must be made upon the person authorized unless service on a different authorized person or on the party himself or herself is ordered by the Commission, or unless pursuant to § 9.8 the person authorized is changed by the party upon due notice to all other parties. Parties must file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

* * * * *

8. In § 9.8, revise paragraph (a)(1) to read as follows:

§ 9.8 Practice before the Commission.

(a) Practice—(1) By non-attorneys. An individual may appear pro se (on his or her own behalf); a general partner may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

* * * * *

9. In § 9.9, revise paragraphs (b)(3) and (b)(4) to read as follows:

§ 9.9 Waiver of rules; delegation of authority.

* * * * *

(b) * * *

(3) The General Counsel, or his or her designee, may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (b)(1) of this section.

(4) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the General Counsel, or his or her designee, under this section.

10. Revise § 9.11 to read as follows:

§ 9.11 Form, contents and delivery of notice of disciplinary or access denial action.

(a) When required. Whenever an exchange decision pursuant to which a disciplinary action or access denial action is to be imposed has become final, the exchange must, within thirty days thereafter, provide written notice of such action to the person against whom the action was taken and notice to the National Futures Association

(“NFA”) through the NFA’s Background Affiliation Status Information Center (“BASIC”) system: Provided, That a designated contract market is not required to notify the NFA of any summary action, as permitted under the provisions of part 38, appendix B, Core Principle 13, paragraph (a)(6) of this chapter, which results in the imposition of minor penalties for the violation of exchange rules relating to decorum or attire. No final disciplinary or access denial action may be made effective by the exchange except as provided in § 9.12.

(b) Contents of notice. For purposes of this part:

(1) The written notice of a disciplinary action or access denial action provided to the person against whom the action was taken by a designated contract market must be a copy of a written decision which accords with:

(i) Part 38, appendix B, Core Principle 13, paragraph (a)(3) of this chapter in the case of settlement offers;

(ii) Section 38.708 of this chapter in the case of decisions; or

(iii) Part 38, appendix B, Core Principle 13, paragraph (a)(5)(iv) of this chapter in the case of appeal decisions of this chapter (including copies of any materials incorporated by reference) or other written notice which must include items listed in paragraphs (b)(3)(i) – (vi) of this section.

(2) The written notice of a disciplinary action or access denial action provided to the person against whom the action was taken by a swap execution facility must be a copy of a written decision which accords with:

(i) Part 37, appendix B, Core Principle 2, paragraph (a)(9) of this chapter in the case of settlement offers;

(ii) Section 37.206(d) of this chapter in the case of decisions; or

(iii) Part 37, appendix B, Core Principle 2, paragraph (a)(11)(iv) of this chapter in the case of appeal decisions of this chapter (including copies of any materials incorporated by reference) or other written notice which must include items listed in paragraphs (b)(3)(i) through (vi) of this section.

(3) The notice of a disciplinary action or access denial action provided to the NFA must include only the items listed in the following paragraphs (i) through (v):

(i) The name of the person against whom the disciplinary action or access denial action was taken;

(ii) A statement of the reasons for the disciplinary action or access denial action, detailing the exchange product which was involved, as applicable, and whether the violation that resulted in the action also resulted in financial harm to any customers together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action;

(iii) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed;

(iv) The terms of the disciplinary action or access denial action;

(v) The date on which the action was taken and the date the exchange intends to make the disciplinary or access denial action effective; and

(vi) Except as otherwise provided in § 9.1(b), a statement informing the party subject to the disciplinary action or access denial action of the availability of Commission review of the exchange action pursuant to section 8c of the Act and this part.

(c) Delivery and filing of the notice. Delivery of the notice must be made either personally to the person who was the subject of the disciplinary action or access denial action or by mail to such person at that person's last known address. Filing of the notice with the NFA is accomplished when an authorized exchange employee verifies the accuracy of the information entered into BASIC.

(d) Effect of delivery by mail. Delivery by mail to the person disciplined or denied access will be complete upon deposit in the mail of a properly addressed and postpaid document. Where delivery to the person disciplined or denied access is effected by such mail, the time within which a notice of appeal or petition for stay may be filed will be increased by three days.

(e) Certification. Copies of the notice and the submission of any additional information provided pursuant to this section must be certified as true and correct by a duly authorized officer, agent or employee of the exchange. Notice filed with the NFA is deemed certified when an authorized exchange employee verifies the accuracy of the information entered into BASIC.

11. Revise § 9.12 to read as follows:

§ 9.12 Effective date of disciplinary or access denial action.

(a) Effective date. Any disciplinary or access denial action taken by an exchange will not become effective until at least fifteen days after the written notice prescribed by

§ 9.11 is delivered to the person disciplined or denied access; Provided, however, That the exchange may cause a disciplinary action to become effective prior to that time if:

(1) As permitted by part 37, appendix B, Core Principle 2, paragraph (a)(14) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(7) (emergency disciplinary actions) of this chapter, the exchange reasonably believes, and so states in its written decision, that immediate action is necessary to protect the best interests of the marketplace; or

(2) As permitted by part 37, appendix B, Core Principle 2, paragraph (a)(10)(vi) of the chapter or part 38, appendix B, Core Principle 13, paragraph (a)(4) (hearings) of this chapter, the exchange determines, and so states in its written decision, that the actions of a person who is within the exchange's jurisdiction has impeded the progress of a disciplinary hearing; or

(3) As permitted by part 37, appendix B, Core Principle 2, paragraph (a)(13) (summary fines for violations of rules regarding timely submission of records) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(6) (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities) of this chapter, the exchange determines that a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; or

(4) The person against whom the action is taken has consented to the penalty to be imposed and to the timing of its effectiveness.

(b) Notice of early effective date. If the exchange determines in accordance with paragraph (a)(1) of this section that a disciplinary action will become effective prior to

the expiration of fifteen days after written notice thereof, it must notify the person disciplined in writing, either personally or by email to the person's last known email address, stating the reasons for the determination. The exchange must also immediately notify the Commission by email to secretary@cftc.gov. Where notice is delivered by email, the time within which the person so notified may file a petition for stay pursuant to § 9.24(a)(2) will be increased by one day.

12. Revise § 9.13 to read as follows:

§ 9.13 Publication of notice.

Whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(b). An exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of § 9.12 by posting a notice on its Web site to which its members and the public regularly have access. Such notice must be maintained and readily available on the exchange's Web site.

13. In § 9.24, revise paragraph (a)(2) to read as follows:

§ 9.24 Petition for stay pending review.

(a) * * *

(2) Within ten days after a notice of summary action has been delivered in accordance with § 9.12(b) to a person who is the subject of a summary action permitted by part 37, appendix B, Core Principle 2, paragraph (a)(14) or part 38, appendix B, Core Principle 13, paragraph (a)(7) (emergency disciplinary actions) of this chapter, that

person may petition the Commission to stay the effectiveness of the summary action pending completion of the exchange proceeding.

* * * * *

14. Revise § 9.31 to read as follows:

§ 9.31 Commission review of disciplinary or access denial action on its own motion.

(a) Request for additional information. Where a person disciplined or denied access has not appealed the exchange decision to the Commission, upon review of the notice specified in § 9.11, the Division of Market Oversight or the Division of Swap Dealer and Intermediary Oversight may request that the exchange file with the Division the record of the exchange proceeding, or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular exchange proceeding as the Division may specify. The exchange must promptly advise the person who is the subject of the disciplinary or access denial action of the Division's request. Within thirty days after service of the Division's request, the exchange must file the information requested with the Division in the manner requested by the Division and, upon request, deliver that information to the person who is the subject of the disciplinary or access denial action. Delivery to the person who is the subject of the disciplinary or access denial action must be in the manner prescribed by § 9.11(c). A person subject to the disciplinary action or access denial action requesting a copy of the information furnished to the Division must, if the exchange rules so provide, agree to pay the exchange reasonable fees for printing the copy.

(b) Review on motion of the Commission. The Commission may institute review of an exchange disciplinary or access denial action on its own motion. Other than in extraordinary circumstances, such review will be initiated within 180 days after the NFA has received the notice of exchange action provided for in § 9.11. If the Commission should institute review on its own motion, it will issue an order permitting the person who is the subject of the disciplinary or access denial action an opportunity to file an appropriate submission, and the exchange an opportunity to file a reply thereto.

Issued in Washington, DC, on January 13, 2017, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Amendments to Parts 3 and 9 of the Commodity Futures Trading
Commission's Rules – Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

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