



6351-01-P

## **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:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is adopting certain amendments to its rules that, respectively, govern registration of intermediaries and relate to the Commission’s review of exchange disciplinary, access denial, or other adverse actions. Generally speaking, these amendments are technical in nature. The amendments to both areas of the rules integrate existing advisory guidance. The amendments to the rules on review of exchange disciplinary, access denial, or other adverse actions also incorporate swap execution facilities (“SEFs”) and update provisions currently applicable to designated contract markets (“DCMs”). These final rules also remove numerous outdated cross-references, and add citations to applicable parallel provisions contained in other Commission regulations pertaining to SEFs and DCMs. Additionally, the final rules address the publication of final disciplinary and access denial actions taken by the SEFs and DCMs on their exchange websites.

**DATES:** This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:**

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**I. Background**

*A. Description of Part 9*

On December 20, 1978, the Commission adopted part 9 rules relating to the Commission's review of exchange disciplinary, access denial, or other adverse actions.<sup>1</sup>

These rules detail the process and procedures for Commission review, including the appellate process in cases where a person applies to the Commission for review. The

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<sup>1</sup> 43 FR 59343 (Dec. 20, 1978).

rules also address the procedures and standards governing filing and service, motions, and settlement; the process that exchanges must follow in providing notice of the final disciplinary action to the subject of the action and to the Commission; and 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 adopted final regulations for DCMs (“DCM Final Rules”).<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> The Commission removed part 8 from the regulations in order to avoid any confusion from having two sets

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<sup>2</sup> Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612 (June 19, 2012).

<sup>3</sup> *Id.* at 36697; 17 CFR 38.2. Part 9 is not included in the list of exempt provisions.

<sup>4</sup> 17 CFR 9.2(c).

<sup>5</sup> 17 CFR 38.700 through 38.712.

<sup>6</sup> 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).

of disciplinary procedures for DCMs.<sup>7</sup> As a result of this removal, the current part 9 rules, which contain cross-references to part 8 throughout, are being updated in the final rules to instead cite to parallel provisions now contained in part 37 for SEFs and part 38 for DCMs.

*C. SEF Final Rules*

On June 4, 2013, the Commission adopted new rules in part 37 for SEFs (“SEF Final Rules”).<sup>8</sup> In regulation 37.2 of the SEF Final Rules, the Commission specified that SEFs shall comply with the requirements of part 9.<sup>9</sup> Accordingly, for clarity purposes, the final rules amend certain part 9 definitions and language which have not yet been addressed, to integrate them into the post-Dodd-Frank regulatory regime.

**II. Summary of the Proposal**

*A. Amendments to Part 9: Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions*

On January 23, 2017, the Commission published a Notice of Proposed Rulemaking (“NPRM” or “Proposal”) to amend certain part 3 and part 9 rules.<sup>10</sup> As discussed in the NPRM, most of the amendments are purely ministerial—for instance, some of the proposed changes updated definitions in Commission regulation 9.2 to

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<sup>7</sup> 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 Adaptation of Regulations to Incorporate Swaps Rulemaking. 17 CFR 38.2; and removal of part 8 at 77 FR 66304 (Nov. 2, 2012).

<sup>8</sup> Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013).

<sup>9</sup> *See id.* 33479; 17 CFR 37.2.

<sup>10</sup> 82 FR 7738 (Jan. 23, 2017).

conform them to the Commodity Exchange Act (“CEA” or “Act”) as amended by the Dodd-Frank Act as well as other sections of the Commission’s regulations.<sup>11</sup>

The Commission proposed to amend the definitions of four terms in regulation 9.2. First, the Commission proposed to amend the definition of “disciplinary action” by removing the reference to “member of an exchange” and inserting “person” in its place.<sup>12</sup> The Commission explained in the NPRM that 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.<sup>13</sup> The proposed language to include “person” in the “disciplinary action” definition is consistent with the statutory language found in Core Principle 2 for DCMs and section 8c(b) of the CEA, as amended by the Dodd-Frank Act.<sup>14</sup> Second, the Commission proposed to amend the definition of “exchange” in regulation 9.2(c) to include SEFs. This change makes it 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.<sup>15</sup> Third, the Commission proposed to amend regulation 9.2(f) to expand the definition of “member of an exchange” to

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<sup>11</sup> *Id.* at 7740.

<sup>12</sup> The Commission also proposed to amend the disciplinary action definition by removing the reference to regulation 8.03(i).

<sup>13</sup> 82 FR 7741 (Jan. 23, 2017).

<sup>14</sup> 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.

<sup>15</sup> *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).

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.<sup>16</sup> Fourth, the Commission proposed 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.<sup>17</sup>

The Commission also proposed to amend regulation 9.11(a) to remove the requirement that an exchange provide written notice to the Commission of a final disciplinary action or access denial action and replace it with a requirement to provide notice to the National Futures Association (“NFA”). As explained in the NPRM, the Commission delegated authority to the NFA in 1999 to receive and process exchange disciplinary and access denial information (“Part 9 Delegation”).<sup>18</sup> Consequently, the NFA currently serves as the official custodian of records for exchange disciplinary filings. The Commission noted in the NPRM that it intends to amend the Part 9 Delegation order, consistent with the requirement that exchanges provide exchange

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<sup>16</sup> 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, applies to all persons with trading privileges.

<sup>17</sup> 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, section (a)(10)(vi) or part 38, appendix B, Core Principle 13, section (a)(4) (penalty for impeding progress of hearing); part 37, appendix B, Core Principle 2, section (a)(14) or part 38, appendix B, Core Principle 13, section (a)(7) (emergency disciplinary actions); part 37, appendix B, Core Principle 2, section (a)(13) (summary fines for violations of rules regarding timely submission of records); or part 38, appendix B, Core Principle 13, section (a)(6) (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities).

<sup>18</sup> 82 FR 7741 (Jan. 23, 2017). 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.

disciplinary and access denial information to the NFA.<sup>19</sup> In 1999, concurrent with the Part 9 Delegation, the Commission also published an advisory permitting exchanges to file § 9.11 notices with the Commission or the NFA (“Part 9 Advisory”).<sup>20</sup> The Commission proposed to codify the Part 9 Advisory and formally replace the regulation 9.11 requirement that written notice be provided to the Commission by amending § 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.

The Commission proposed an amendment to regulation 9.11(b)(3)(ii) by adding the type of product (as applicable) involved in the adverse action as an additional element required to be included in the contents of the notice. The Commission stated in the NPRM that requiring exchanges to provide this information in 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.<sup>21</sup> The Commission also proposed to amend regulation 9.11(b)(3)(ii) by codifying 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.<sup>22</sup>

The Commission also proposed 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 given the proposed changes to regulation 9.11(a) discussed

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<sup>19</sup> *Id.*

<sup>20</sup> 64 FR 39915 (July 23, 1999) (“Part 9 Advisory”).

<sup>21</sup> 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.

<sup>22</sup> 64 FR 39917 (July 23, 1999).

above. The NPRM provided that filing of the notice with the NFA is accomplished when an authorized exchange employee verifies the accuracy of the information entered into BASIC.

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

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 to the person that is the subject of such action must provide notification in writing either personally or by telegram or other means of written telecommunication. The exchange also must immediately notify the Commission by telegram or other means of written telecommunication. The Commission proposed to modernize regulation 9.12(b) by replacing references to “telegram or other means of written telecommunication” with the term “email” and provide a Commission email address for Commission notification.

Commission regulation 9.13 provides that whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make its findings public by disclosing at least the information contained in the Commission regulation 9.11(b) notice. An exchange also must make such findings public as soon as the disciplinary action or access denial action becomes effective by posting a notice in a conspicuous place on its premises. As noted in the NPRM, posting a notice of disciplinary action on the premises of an exchange does little to publicize the

action.<sup>23</sup> Accordingly, the Commission proposed to modernize regulation 9.13 by requiring the notice to be posted on an exchange’s website to which its members, market participants, and the public regularly have access.<sup>24</sup> The Commission also proposed to amend regulation 9.13 by requiring the notice to be maintained and readily available on an exchange’s website.<sup>25</sup> 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 also noted in the NPRM that it 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.<sup>26</sup>

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<sup>23</sup> 82 FR 7743 (Jan. 23, 2017).

<sup>24</sup> The Commission noted in the NPRM that many DCMs have already adopted more modern methods to publicize notices of disciplinary action. 82 FR 7743 (Jan. 23, 2017). 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 noted that the 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](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).

<sup>25</sup> 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.

<sup>26</sup> 82 FR 7743 (Jan. 23, 2017). 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.

*B. Amendment to 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 (“FCM”), retail foreign exchange dealer (“RFED”), swap dealer (“SD”), major swap participant (“MSP”), commodity trading advisor (“CTA”), commodity pool operator (“CPO”), introducing broker (“IB”), or floor trader (“FT”) that is a non-natural person or leverage transaction merchant (“LTM”) must 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 in accordance with the instructions of each form to create a Form 3-R record of such change.

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 the Form 3-R if the information to be reported is solely the result of an exchange disciplinary or access denial action.<sup>27</sup> In 2012, the Commission eliminated the requirement that registrants and individuals use Form 3-R to update their existing Form 7-R or 8-R and provided that an update to a registrant’s online Form 7-R or 8-R would

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<sup>27</sup> 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 registrant 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. 64 FR 39912 (July 23, 1999).

automatically create a record of changes equivalent to a completed Form 3-R.<sup>28</sup> The Commission proposed to codify the Part 3 Advisory by amending regulation 3.31(a)(1) with language that relieves applicants or registrants from the obligation to update their Form 7-R or 8-R if the information to be reported is solely the result of an exchange disciplinary or access denial action.

### **III. Comments on the Proposal**

The comment period for the Proposal ended on March 24, 2017. The Commission received one comment letter.<sup>29</sup> The Minneapolis Grain Exchange (“MGEX”) generally supported the Proposal while offering some suggestions for certain provisions. MGEX agreed with the Commission’s general approach to modernize permitted methods of communication. For example, MGEX cited the language in proposed regulation 9.11(c) that would require an exchange only to verify that information entered into NFA’s BASIC system instead of mailing a notice to the Commission as a positive change. MGEX also favorably cited proposed regulation 9.12(b) that would permit an exchange to email notice of an early effective date of disciplinary action instead of mailing it or by telegram. MGEX noted these changes reduce burdens and suggested that the Commission make similar changes to proposed regulations 9.11(c) and (d) to allow an exchange to email a disciplinary or access denial notice to the person subject to the action.

MGEX agreed that an exchange should publish notices of certain disciplinary actions on its website. However, MGEX requested that an exchange have flexibility

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<sup>28</sup> 77 FR 51898 (Aug. 28, 2012).

<sup>29</sup> See <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1776>.

regarding how it fulfills this obligation. In particular, MGEX requested that regulation 9.13 be amended to ensure that an exchange has flexibility over the format, style, and location of the notice on its website, as well as any ancillary website relating to the publication of such notices. MGEX stated that an exchange should be able to archive notices on its website after a reasonable period of time. MGEX noted that archived notices should be accessible, but an exchange should have discretion to maintain them separately on its website. In addition, MGEX indicated that there may be situations where removing a notice from its website would be appropriate and exchanges should be provided with this discretion. In support of its position, MGEX stated that the regulatory environment or exchange rules could change over time such that certain notices no longer provide educational or informative value. MGEX commented that having notices that are predicated on antiquated rules may actually confuse members, market participants, or the public. Finally, MGEX requested guidance that regulation 9.13 will be limited to disciplinary actions that were finalized after the effective date of any final rulemaking.

#### **IV. Final Rules and Notice and Order**

##### *A. Final Rules*

The Commission, in consideration of the MGEX comment, is adopting the part 9 rules as proposed subject to the minor modifications described below. The Commission agrees with MGEX's suggestion to amend regulations 9.11(c) and (d) to allow an exchange to use email as a permitted method of delivering notice of the disciplinary or access denial action to the person subject to the action. Accordingly, the Commission is modifying 9.11(c) to allow delivery of the notice to the person's last known email

address. The Commission is also amending 9.11(d) to provide that delivery of the disciplinary notice will be complete upon transmission of the email.

The Commission also agrees with MGEX that an exchange should have flexibility over the format, style, and location of the notice on its website including any indexing or search functionality. The Commission believes that adopting the rule as proposed provides sufficient flexibility for exchanges in this regard, although the Commission notes that an exchange must ensure that access to all disciplinary notices remain readily accessible regardless of whether the exchange decides to archive notices after a reasonable period of time.

In response to MGEX's comment requesting that exchanges should be given discretion in certain situations to remove a disciplinary notice from its website, the Commission acknowledges MGEX's concern that the regulatory environment or exchange rules could change over time and having notices that are predicated on antiquated rules may confuse members, market participants, or the public. However, the Commission believes that all disciplinary and access denial notices must be maintained on the exchange's website without the possibility of removal. Access to information regarding all exchange disciplinary and access denial actions provides valuable guidance and information to exchange members, market participants, and the public regardless of whether the regulatory environment or an exchange rule has changed. For example, the notices allow customers to consider member firms' and traders' disciplinary histories when considering whether to engage in business with them. This includes conduct by firms and traders that violated an exchange rule at the time the rule was in effect. The final rule also enables customers to consider an exchange's propensity to sanction firms

and traders for rule violations when considering whether to trade on the exchange. In the limited circumstances where an exchange believes that a disciplinary notice may confuse its members, market participants, or the public as a result of a regulatory environment or exchange rule change, an exchange could address this concern by posting an attachment to the disciplinary notice that explains the nature of any such change.

The Commission agrees with MGEX that the rulemaking should not be applied retroactively to final exchange disciplinary actions. Therefore, exchanges only will be required to publish disciplinary actions that are finalized after the effective date of the final rules.

As discussed above, the Commission proposed 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. The Commission explained that 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. The Commission is adopting the amendment to regulation 9.2(f) as proposed. The Commission notes that 9.2(f)(1) preserves the prior definition of “member of an exchange,” while the inclusion of “any person who has trading privileges on an exchange” under 9.2(f)(2) conforms the “member of an exchange” definition with the meaning set forth in section 1a(34)(B) of the CEA and regulation 1.3(q)(1)(ii).

The Commission is also adopting the amendment to regulation 3.31(a)(1) as proposed. Therefore, the final rule relieves applicants and registrants from the obligation to update their Form 7-R or 8-R if the information to be reported is solely the result of an exchange disciplinary or access denial action.

*B. Deletion of References to Commission Form 3-R*

The Commission is making an additional technical change to regulation 3.31. As reflected in the amended text of the rule, the Commission is eliminating the references to Form 3-R from subsections (a)(1), (a)(3), (b), and (c)(1) of regulation 3.31 by deleting from these subsections the phrase “to create a Form 3-R record of change.”<sup>30</sup> The Commission no longer requires market participants to use the Form 3-R.<sup>31</sup> Additionally, by separate Notice, the Commission formally proposed to cancel the Form 3-R and transfer the administrative burdens associated with that form to Forms 7-R and 8-R.<sup>32</sup> Accordingly, the Commission is updating regulation 3.31 to reflect the retirement of Form 3-R. For these same reasons, the Commission is making a similar technical change to regulation 3.11. As reflected in the amended text of the rule, the Commission is deleting the reference to Form 3-R from subsection (b) of regulation 3.11. The Commission notes that these changes to regulations 3.11 and 3.31 are purely technical and do not affect the obligations of the individuals and entities subject to these rules.

*C. Notice and Order*

In a separate document published elsewhere in this issue of the *Federal Register*, the Commission issued an updated Notice and Order to replace the Part 9 Delegation from 1999 regarding the specific duties delegated by the Commission to the NFA for receiving and processing exchange disciplinary and access denial information. Among other things, the Notice and Order is being updated to account for the amendment to

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<sup>30</sup> The phrase being deleted from subsection (a)(1) of regulation 3.31 is “to create a Form 3-R record of such change.”

<sup>31</sup> Registration of Intermediaries, 77 FR 51898 (Aug. 28, 2012).

<sup>32</sup> Agency Information Collection Activities: Proposed Collection Revision, Comment Request: Adoption of Revised Registration Form 8-R and Cancellation of Form 3-R, 82 FR 19663, 19664 (Apr. 28, 2017).

regulation 9.11(a) that will require exchanges to file disciplinary and access denial actions with the NFA. As discussed above, prior to this amendment, exchanges were only encouraged to file the notifications with the NFA, but not required. In addition, the updated Notice and Order includes SEFs now filing the required notices with the NFA as SEFs did not exist when the Commission issued the Part 9 Delegation and Advisory in 1999.

Consistent with the Part 9 Delegation, the updated Notice and Order delegates to the NFA the authority to perform the following functions: (1) to process exchange disciplinary information filed by an exchange or the Commission in the BASIC system; (2) to provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information and to provide the Commission with the capability to generate standardized reports on the BASIC system; (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 all exchange disciplinary and access denial actions filed with the NFA for inclusion in the BASIC system.

## **V. Related Matters**

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (“RFA”) requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.<sup>33</sup> The Commission did not receive any comments with respect to the RFA. The part 9 rules adopted herein will affect all SEFs and DCMs. The Commission previously established

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<sup>33</sup> 5 U.S.C. 601 *et seq.*

certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.<sup>34</sup> The Commission previously determined that DCMs and SEFs are not small entities for purposes of the RFA.<sup>35</sup>

The part 3 rules adopted herein will affect certain applicant or registrant FCMs, RFEDs, SDs, MSPs, CTAs, CPOs, IBs, FTs who are non-natural persons, and LTMs who will no longer have to file a Form 7-R or 8-R if the information to be reported is solely the result of an exchange disciplinary or access denial action. The Commission previously determined that FCMs, RFEDs, SDs, MSPs, CPOs, and LTMs are not small entities for purposes of the RFA.<sup>36</sup> 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.<sup>37</sup> As certain of these registrants may be small entities for purposes of the RFA, the Commission has considered whether the final rules will have a significant impact on these registrants.

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<sup>34</sup> See 47 FR 18618 through 18621 (Apr. 30, 1982).

<sup>35</sup> See 47 FR 18618, 18619 (Apr. 30, 1982) (DCMs); 78 FR 33548 (June 4, 2013) (SEFs).

<sup>36</sup> 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).

<sup>37</sup> 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).

The amendment to Commission regulation 3.31 is 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 if the information to be reported is solely the result of an exchange disciplinary or access denial action.<sup>38</sup> Beyond conforming the regulation to an established agency policy provided for in the Part 3 Advisory, the conforming amendments to regulation 3.31 will not affect the current processes or impose any new costs on small entities. The final rule codifies the filing relief set forth in the Part 3 Advisory and will 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 the final rules. Consequently, the Commission finds that no significant economic impact on small entities will result from the final rules.

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

*B. Paperwork Reduction Act*

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.<sup>39</sup> 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

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<sup>38</sup> 64 FR 39912 (July 23, 1999).

<sup>39</sup> 44 U.S.C. 3501 *et seq.*

and Budget (“OMB”). The final rules contain provisions that qualify as collections of information, for which the Commission has already sought and obtained control numbers from the 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).

As explained in the NPRM, the Commission did not seek to amend information collections 3038–0052 or 3038–0074 because the Commission believes that the rule modifications proposed would not impose any new information collection requirements that require approval from OMB under the PRA.<sup>40</sup> The Commission invited public comment on the accuracy of its determination that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the Proposal.<sup>41</sup> The Commission did not receive any such comments. Accordingly, the Commission believes the final rules will not impact the current burden estimates for collections 3038–0052 and 3038–0074. The Commission will nevertheless, by separate action, publish in the *Federal Register* a notice and request for comment on the additional elements to be included as part of exchange notices, and submit to OMB an information collection request to amend the relevant information collection, in accordance with 44 U.S.C. 3506(c)(2)(A) and 5 CFR 1320.8(d). As noted previously, by separate Notice published in the *Federal Register*, the Commission provided notice that

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<sup>40</sup> 82 FR 7745-46 (Jan. 23, 2017).

<sup>41</sup> For collection 3038–0052, see OMB Control No. 3038–0052, available at [http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038–0052](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>.

the Form 3-R was being cancelled, and that the PRA burdens associated with Form 3-R under collections 3038-0023 and 3038-0072 were being reassigned to Forms 7-R and 8-R.<sup>42</sup>

*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.<sup>43</sup> 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 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 final rules, 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 explained in the NPRM, and as adopted, the rules are primarily technical in nature that clarify the obligations under the current rules and

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<sup>42</sup> 82 FR 19663 (Apr. 28, 2017).

<sup>43</sup> 7 U.S.C. 19(a).

generally do not impose any new costs on DCMs, SEFs, or market participants.<sup>44</sup>

Regulation 9.11(b)(3)(ii) will require the exchanges to specify in the disciplinary notices the product involved in the disciplinary action and whether the rule violation resulted in financial harm to any customers. The Commission acknowledges that these additional elements in the disciplinary notices may result in additional costs, but any such costs would be de minimis. Accordingly, the Commission addresses below the costs associated with Commission regulation 9.13 requirement for DCMs and SEFs to publish and maintain disciplinary notices on their respective websites.

In the Proposal, the Commission sought comment concerning all aspects of the costs and benefits. The Commission did not receive any comments that specifically addressed the Cost-Benefit Considerations section of the Proposal. However, MGEX commented that the proposed amendment to regulation 9.11(c) that would allow an exchange to only have to verify that information has been entered into NFA BASIC instead of mailing a notice to the Commission, and the amendment to 9.12(b) that would permit an exchange to satisfy its obligations to deliver notice of the disciplinary or access denial action by email reduces the burden to exchanges, albeit in nominal ways. As discussed above, the Commission is amending regulations 9.11(c) and (d) to allow exchanges to satisfy their delivery obligations of the disciplinary or access denial action to the person subject to the action by email.

Finally, in light of NFA's role and experience in performing registration functions on behalf of the Commission and as the custodian of related records (including exchange disciplinary filings), the Commission believes that it is appropriate to remove the

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<sup>44</sup> 82 FR 7746 (Jan. 23, 2017).

requirement that an exchange provide written notice to the Commission of a final disciplinary action or access denial action and replace it with a requirement to provide notice to the NFA. NFA performs registration processing functions with respect to applicants and registrants and an individual's or firm's disciplinary history is a factor that must be considered in any fitness determination. Delegating to the NFA the responsibility for processing such filings and generating reports with the information amassed, should ensure that the NFA has the necessary information to continue to make appropriate registration determinations. The Commission also believes this delegation will enhance efficiency by permitting the Commission to carry out its statutory responsibilities under the CEA, while also freeing up Commission resources to be directed to other parts of its regulatory mandate.

## 2. Commission Regulation 9.13–Publication of Notice

Commission regulation 9.13 requires all DCMs and SEFs to maintain and make readily accessible final notices of exchange disciplinary and access denial actions on their websites.<sup>45</sup> This new requirement replaces the existing requirement in Commission regulation 9.13 that exchanges publish the notice in a conspicuous place on the exchange's premises.

### a. Costs

The Commission continues to believe that requiring exchanges to post final disciplinary and access denial notices to their websites will slightly increase the costs for DCMs and SEFs. The Commission notes that the additional costs incurred by DCMs and SEFs will be offset in part due to the amendment in Commission regulation 9.13 that

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<sup>45</sup> 17 CFR 9.13.

removes 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 system to determine the total number of disciplinary and access denial actions filed by DCMs and SEFs in 2016.<sup>46</sup>

*Total number of reported disciplinary and access denial actions in BASIC by all DCMs: 296*

*Total number of reported disciplinary and access denial actions in BASIC by all SEFs: 15*

The total number of exchange disciplinary and access denial actions per year for all DCMs and SEFs is estimated to be 311 (296 actions for DCMs plus 15 actions for SEFs equals 311 total actions per year). The Commission anticipates each DCM and SEF will 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 exchange's premises. Accordingly, the aggregate new burden of Commission regulation 9.13 is estimated to be 77.75 hours per year for the 15 DCMs and 24 SEFs (15 minutes multiplied by 311 anticipated actions per year equals 77.75 burden hours).

The Commission expects that a compliance officer employed by the exchange will post the disciplinary or access denial action notices to the exchange website.

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<sup>46</sup> The Commission's cost estimates in the NPRM were based on the 452 disciplinary and access denial actions filed by DCMs in 2015. Because SEFs did not post any such actions with BASIC in 2015, the cost estimates for SEFs were based on the disciplinary and access denial actions filed by DCMs in 2015, excluding the four DCMs with the largest number of reported disciplinary and access denial actions. The Commission explained that the average number of disciplinary and access denial actions by the other 11 DCMs provide a more appropriate comparison with respect to estimating the number of actions filed by SEFs annually. This average resulted in an estimate of eight disciplinary and access denial actions filed in BASIC for each SEF annually. The Commission noted that as the SEFs mature, in terms of the number of participants and volume, the number of disciplinary and access denial actions may increase accordingly. 82 FR 7746 (Jan. 23, 2017).

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.<sup>47</sup> Accordingly, the burden associated with posting the disciplinary notices on exchange websites is approximately \$3,887.50 per year for all of the 15 DCMs and 24 SEFs, (\$50 multiplied by the anticipated 77.75 burden hours equals \$3,887.50 per year).<sup>48</sup>

b. Benefits

The Commission continues to believe 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 serves to deter and prevent future misconduct and to improve overall compliance standards in the futures and swaps industry. It also 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

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<sup>47</sup> Bureau of Labor Statistics, *Occupational Employment and Wages: 13-1041 Compliance Officers*, (May 2014), available at <http://www.bls.gov/oes/current/oes131041.htm>.

<sup>48</sup> As noted in the NPRM, 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 will be insignificant in its calculation of the total annual burden associated with the final rules. 82 FR 7747 (Jan. 23, 2017).

insight on related facts and sanctions. The Commission believes that the added deterrence of publishing disciplinary notices on 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 benefits 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 believes that market participants and the public will benefit from the ministerial and conforming amendments 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 believes that the amendment to regulation 9.13, which requires exchanges to publish notice of final disciplinary and access denial actions on exchange websites, increases transparency of exchange disciplinary actions and serves 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 will 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 websites is intended to improve the operational efficiency and financial integrity of the

futures and swaps markets by enabling the public and those who access an exchange website to be made aware of any disciplinary and access denial actions imposed by the exchange. By publishing the notice on the exchange's website, the Commission believes that the efficiency and financial integrity of the markets will be bolstered by the deterrent effect achieved by posting the notice in a publicly accessible medium.

(3) *Price discovery.* The Commission did not identify any impact on price discovery as a result of the proposed regulations, and did not believe there would be one, but sought comment as to any potential impact. The Commission did not receive any comments on this issue. Accordingly, the Commission believes that the final regulations will not impact price discovery.

(4) *Sound risk management practices.* The Commission did not identify any impact on sound risk management practices as a result of the proposed regulations, and did not believe there would be one, but sought comment as to any potential impact. The Commission did not receive any comments on this issue. Accordingly, the Commission believes that the final regulations will not impact sound risk management practices.

(5) *Other public interest considerations.* The Commission has not identified any other public interest considerations.

*D. Antitrust Considerations*

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA in issuing any order or adopting any Commission rule or regulation. The Commission does not anticipate that

the amendments adopted herein would promote or result in anticompetitive consequences or behavior.

## **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 amends 17 CFR chapter I as follows:

## **PART 3—REGISTRATION**

1. The authority citation for part 3 is revised 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.

2. In § 3.11, revise paragraph (b) to read as follows:

### **§ 3.11 Registration of floor brokers and floor traders.**

\* \* \* \* \*

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraph (a) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets and swap execution facilities have ceased: provided, that if a floor broker or floor trader whose trading privileges on all contract markets and swap execution facilities have ceased for reasons unrelated to any Commission action or

any contract market or swap execution facility disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market or swap execution facility where such person held such privileges within the preceding sixty days, such registration as a floor broker or floor trader, respectively, shall be deemed to continue and no new Form 7-R, Form 8-R or change to Form 7-R or Form 8-R need be filed solely on the basis of the resumption of trading privileges. A floor broker or floor trader is prohibited from engaging in activities requiring registration under the Act or from representing such person to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. Each contract market and swap execution facility that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must provide notice in accordance with § 3.31(d) after such person's trading privileges on such contract market or swap execution facility have ceased.

\* \* \* \* \*

3. In § 3.31, revise paragraphs (a)(1), (a)(3)(i), (b), and (c)(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.

\* \* \* \* \*

(3) \* \* \*

(i) If the new principal is not a natural person, the registrant shall update such Form 7-R.

\* \* \* \* \*

(b) Each applicant or registrant as a floor broker, floor trader or associated person, and each principal of 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 must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8-R or supplemental statement thereto.

(c)(1) After the filing of a Form 8-R or updating a Form 8-R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

(i) The failure of that person to become associated with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor; or

(ii) The termination of the association of the associated person with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor.

\* \* \* \* \*

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

4. 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, and 21.

5. 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), (b)(3)(i) through (v), and (c), and 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.

6. 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) of this chapter (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) of this chapter (emergency disciplinary actions); part 37, appendix B, Core Principle 2, paragraph (a)(13) of this chapter (summary fines for violations of rules regarding timely submission of records); or part 38, appendix B, Core Principle 13, paragraph (a)(6) of this chapter (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities).

7. 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).

8. 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.

\* \* \* \* \*

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

**§ 9.8 Practice before the Commission.**

(a) \* \* \*

(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.

\* \* \* \* \*

10. In § 9.9, revise paragraphs (b)(3) and (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.

11. 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 (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 (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 (b)(3)(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 personally to the person who was the subject of the disciplinary action or access denial action, by mail to such person at that person's last known address, or by email to the person's last known email 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 or email.* 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. Delivery by email will be complete upon transmission of the email.

(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.

12. 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) of this chapter (emergency disciplinary actions), 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 this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(4) of this chapter (hearings), 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) of this chapter (summary fines for violations of rules regarding timely submission of

records) or part 38, appendix B, Core Principle 13, paragraph (a)(6) of this chapter (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities), 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](mailto: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.

13. 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.

14. 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) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(7) of this chapter (emergency disciplinary actions), that person may petition the Commission to stay the effectiveness of the summary action pending completion of the exchange proceeding.

\* \* \* \* \*

15. 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 9, 2018, 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 Technical Amendments to Rules on Registration and Review of  
Exchange Disciplinary, Access Denial or Other Adverse Actions – Commission  
Voting Summary**

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

[FR Doc. 2018-00467 Filed: 1/11/2018 8:45 am; Publication Date: 1/12/2018]