

dispositive decision for which a notice of appeal has been filed, the notice of appeal and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the futures commission merchant is a party or its property or assets is subjects.

(c) Every contract market shall submit to the Commission copies of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decisions and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any officer, director, or other official of the contract market arising from conduct in such person's capacity as a contract market official and alleging violations of:

(1) The act or any rule, regulation, or order thereunder;

(2) the constitution, bylaws or rules of the contract market; or

(3) the applicable provisions of state law relating to the duties of officers, directors, or other officials of business organizations.

(d) Every futures commission merchant shall submit to the Commission copies of any dispositive or partially dispositive decision concerning which a notice of appeal has been filed, the notice of appeal, and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any person who is a principal of the futures commission merchant (as that term is defined in §3.1(a) of this chapter) arising from conduct in such person's capacity as a principal of the futures commission merchant and alleging violations of: (1) The Act or any rule, regulation, or order thereunder; or (2) provisions of state law relating to a duty or obligation owed by such a principal.

(e) All documents required by this section to be submitted to the Commission shall be mailed via first-class or submitted by other more expeditious means to the Commission's headquarters office in Washington, DC, Attention: Office of the General Counsel. All documents required by this section to be submitted to the Commission as to matters pending on the effective date of the section (May 25, 1984), shall

be mailed to the Commission within 45 days of that effective date. Thereafter, all complaints required by this section to be submitted to the Commission by contract markets shall be mailed to the Commission within 10 days after the initiation of the legal proceedings to which they relate, all decisions required to be submitted by contract markets shall be mailed within 10 days of their date of issuance, all notices of appeal required to be submitted by contract markets shall be mailed within 10 days of the filing or receipt by the contract market of the notice of appeal, and all decisions and notices of appeal required to be submitted by futures commission merchants shall be mailed within 10 days of the filing or receipt by the futures commission merchant of the relevant notice of appeal. For purposes of paragraph (a), (b), (c) and (d) of this rule, a "material legal proceeding" includes but is not limited to actions involving alleged violations of the Commodity Exchange Act or the Commission's regulations. However, a legal proceeding is not "material" for the purposes of this rule if the proceeding is not in a federal or state court or if the Commission is a party.

[49 FR 17750, Apr. 25, 1984]

§§ 1.61–1.62 [Reserved]

**§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.**

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means a "self-regulatory organization" as defined in §1.3(ee), and includes a "clearing organization" as defined in §1.3(d), except as defined in paragraph (b)(6) of this section.

(2) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

(3) *Arbitration panel* means any person or panel empowered by a self-regulatory organization to arbitrate disputes involving such organization's members or their customers.

(4) *Oversight panel* means any panel authorized by a self-regulatory organization to review, recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement or disciplinary responsibilities.

(5) *Final decision* means:

(i) A decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) Any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(6) *Disciplinary offense* means:

(i) Any violation of the rules of a self-regulatory organization except those rules related to

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping unless resulting in fines aggregating more than \$5,000 within any calendar year;

(ii) Any rule violation described in subparagraphs (a)(6)(i) (A) through (C) of this regulation which involves fraud, deceit or conversion or results in a suspension or expulsion;

(iii) Any violation of the Act or the regulations promulgated thereunder; or,

(iv) Any failure to exercise supervisory responsibility with respect to acts described in paragraphs (a)(6) (i) through (iii) of this section when such failure is itself a violation of either the rules of a self-regulatory organization, the Act or the regulations promulgated thereunder.

(v) A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any federal or state agency, or other governmental body.

(7) *Settlement agreement* means any agreement consenting to the imposition of sanctions by a self-regulatory

organization, a court of competent jurisdiction or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5c(c) of the Act and part 40 of this chapter or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels or governing board who:

(1) Was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;

(2) Entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(i) A finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,

(ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

(4) Currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act;

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of

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any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(c) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b) (1) through (6) of this section.

(d) Each self-regulatory organization shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (a)(6)(i) of this section and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. Each self-regulatory organization must maintain and keep current the schedule required by this section, and post the schedule on the self-regulatory organization's Web site so that it is in a public place designed to provide notice to members and otherwise ensure its availability to the general public.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels or governing board pursuant to the requirements of this regulation during the prior year.

(f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels, oversight panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either section 17(h)(1) of the Act or Commission regulation 9.11.

[55 FR 7890, Mar. 6, 1990, as amended at 58 FR 37653, July 13, 1993; 64 FR 23, Jan. 4, 1999; 77 FR 66331, Nov. 2, 2012]

### § 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees.

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means “self-regulatory organization” as defined in §1.3(ee), not including a “clearing organization” as defined in §1.3(d).

(2) *Major disciplinary committee* means a committee of persons who are authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those which:

(i) Are related to:

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping; and,

(ii) Do not involve fraud, deceit or conversion.

(3) *Regular voting member of a governing board* means any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board.

(4) *Membership interest* (i) In the case of a contract market, each of the following will be considered a different membership interest:

(A) Floor brokers,

(B) Floor traders,

(C) Futures commission merchants,

(D) Producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) Participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) Other market users or participants; except that with respect to paragraph (c)(2) of this section, a contract market may define membership interests according to the different pits or principal groups of commodities traded on the contract market.

(ii) In the case of a registered futures association, each of the following will