

currently responsible for receiving and processing Form 3-Rs filed pursuant to Regulation 3.31. Exchange disciplinary information reported in Regulation 9.11 filings will be posted on the NFA's Background Affiliation Status Information Center ("BASIC") database.⁴ On a daily basis, the NFA will print copies of all entries made in BASIC. These copies will be forwarded to the registration processing group and treated as substitutes for Form 3-Rs. The registration processing group will then update the necessary registration records and the paper copy will be placed in the registrant's or potential registrant's file.

III. Conclusion

The information contained in a Form 3-R filed as a result of an exchange disciplinary or access denial action is identical to that included in an exchange Regulation 9.11 filing. Pursuant to the Commission's delegation to the NFA to receive and to process exchange Regulation 9.11 notices and to maintain a database of the information contained therein, the NFA will have timely access to exchange Regulation 9.11 notices. Therefore, the Commission, in order to avoid duplicative regulatory reporting, is permitting any individual or entity otherwise required under Regulation 3.31(a) or (b) to file a Form 3-R as a result of an exchange disciplinary or access denial action to forego this reporting obligation. The Commission emphasizes that this relief applies only with respect to exchange disciplinary or access denial actions. All other reporting obligations under Regulation 3.31 remain unchanged.

Issued in Washington, D.C. on July 19, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Performance of Certain Functions by the National Futures Association With Respect to Regulation 9.11

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

⁴ A description of BASIC and how exchange disciplinary data is posted on the system can be found in the Advisory and Notice and Order published elsewhere today in the *Federal Register*.

SUMMARY: Consistent with the Commodity Futures Trading Commission's ("Commission") efforts toward reducing the burden of regulatory reporting by exchanges and recognizing advances in electronic media technology, the Commission is delegating to the National Futures Association ("NFA") the duty to receive and to process exchange disciplinary and access denial action information, in accordance with procedures established by the Commission. As part of this delegation, the NFA shall serve as the official custodian of records for exchange disciplinary filings. The NFA additionally will be responsible for using the data collected to generate administrative reports for Commission oversight use.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT:

Rachel F. Berdansky, Special Counsel, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, telephone (202) 418-5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission Regulation 9.11 was established in 1978 to carry out certain mandates of Section 8c of the Commodity Exchange Act ("Act").¹ Among other things, Section 8c of the Act requires exchanges to discipline members; to notify the disciplined individuals, the Commission, and the public of disciplinary actions; and grants the Commission the authority to review exchange disciplinary actions. Regulation 9.11 sets forth the manner in which an exchange is to provide that notice.²

In January 1991, the NFA created its Clearinghouse of Disciplinary Information ("CDI") database, a central

¹ 43 FR 59343 (December 20, 1978). Commission regulations referred to herein can be found at 17 C.F.R. § 9 (1998).

² Regulation 9.11(a) requires that whenever an exchange decision pursuant to which a disciplinary or access denial action is 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 the Commission within 30 days thereafter. The contents to be included in the notice are set forth in Regulation 9.11(b). Regulation 9.11(c) specifies that notice must be delivered either in person or by mail to both the individual subject to the action and to the Commission. Notice filed with the Commission also must include the date on which notice was delivered to the individual and state whether delivery was in person or by mail. Pursuant to Regulation 9.11(d), filing by mail becomes complete upon deposit in the mail. Finally, Regulation 9.11(e) provides that a duly authorized officer, agent, or employee of the exchange must certify that the required notice is true and correct.

repository for information regarding disciplinary actions taken by the NFA, the Commission, and the exchanges. The need for a resource of this kind became evident following the 1989 joint Commission and Federal Bureau of Investigation undercover investigation of floor trading practices at the Chicago Board of Trade and the Chicago Mercantile Exchange. Members of the media found that they had to contact several different organizations to obtain disciplinary history and registration information regarding individuals allegedly involved in illegal trading practices.

CDI has since been replaced by a more versatile database called the Background Affiliation Status Information Center ("BASIC"). A primary reason for the NFA's switch to BASIC was to make information found in CDI available to the public on the Internet.³ Specifically, the public can access information pertaining to the types of violations committed, penalties imposed, the effective date of the action, and, in some cases, text from the exchange's decision.⁴ BASIC, which can be searched by NFA identification number, individual name or firm name, essentially replicates what was previously available to the public only by calling the NFA's toll-free telephone line.

One result from the creation of CDI and BASIC has been that since 1991, the exchanges have been filing disciplinary and access denial action notices ("Regulation 9.11 notices") in duplicate, once with the Commission pursuant to Regulation 9.11, and again with the NFA. Pursuant to ongoing discussions between the Joint Compliance Committee ("JCC"),⁵ the NFA, and the Commission, the exchanges and the NFA have requested Commission permission to allow the exchanges to file Regulation 9.11 notices solely with the NFA to reduce the exchanges' regulatory reporting obligations. Toward that end, the NFA has agreed to process all exchange Regulation 9.11 notices and to assume complete responsibility for maintaining a database of all

³ The Internet address for the NFA's BASIC system is <http://www.nfa.futures.org/BASIC/>.

⁴ BASIC contains all disciplinary actions taken by the NFA since its inception in 1982, all Commission disciplinary actions taken since 1975, and all disciplinary actions taken by exchanges since at least 1990.

⁵ The JCC was established in May 1989 to aid in the development of improved compliance systems through joint exchange efforts and information sharing among self-regulatory organizations. The JCC is comprised of senior compliance officials from all of the domestic futures exchanges and the NFA. Commission staff participate as observers.

exchange, NFA, and Commission disciplinary actions.

In the past, periodic reviews by the Commission's Division of Trading and Markets ("Division") of exchange accuracy and timeliness in filing notices of disciplinary and access denial actions with the NFA revealed that the information provided to the NFA often was incomplete and generally arrived two to six months after the relevant action. Thus, the Commission was unwilling to relinquish its responsibility for collecting and maintaining exchange disciplinary information until satisfied that the exchanges were filing complete and accurate information with the NFA in a timely manner. The exchanges were apprised of the Division's concerns and the Division has continued to monitor the exchanges' progress.⁶ The Commission is now satisfied that the exchanges are filing accurate and timely disciplinary and access denial action notices with the NFA.

In recognition of the exchanges' progress in filing accurate and timely notices of disciplinary and access denial actions with the NFA, and the NFA's success in developing its BASIC system, the Commission hereby delegates to the NFA the following duties: (1) To process exchange disciplinary information; (2) to provide the Commission with access to a Management 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.⁷ The Commission is retaining its oversight authority of the exchanges' disciplinary programs, including its authority to review and to modify exchange disciplinary actions and to take enforcement or other remedial action against exchanges for noncompliance with Regulation 9.11.

This Notice and Order is being issued in conjunction with a Commission Advisory, published elsewhere today in the **Federal Register**, permitting the exchanges to file Regulation 9.11 notices directly with the NFA, rather than filing these notices with the Commission. Among other things, the Advisory

⁶In a June 11, 1998 letter to all JCC representatives, Stephen Braverman, Associate Director, Division of Trading and Markets, expressed the Division's view that it was eager to pursue the goal of allowing exchanges to file Regulation 9.11 notices electronically with the NFA, but wanted assurances that the exchanges' filings would be accurate and timely.

⁷Section II. *infra* includes a complete description of these duties.

provides the exchanges with the option of filing Regulation 9.11 notices with the NFA electronically or in writing. The Commission believes that the resulting effect of the Advisory will be to reduce exchanges' compliance costs by lessening the exchanges' regulatory reporting burden and allowing the exchanges to take advantage of electronic media technology.⁸

II. Delegation of Duties to the NFA

A. Processing Regulation 9.11 Filings and Notice of Filing Deficiencies

The NFA must process exchange Regulation 9.11 notices in a manner consistent with Regulation 9.11.⁹ For purposes of this Notice and Order, the term "process" generally refers to receipt of filings and review of filings for compliance with applicable requirements. As explained in the accompanying Advisory, regulation 9.11 notices filed with the NFA, either in writing or electronically, must satisfy all of the content requirements set forth in Regulation 9.11(b) and must be filed in a timely manner. Toward that end, electronic notices will be deemed timely if verified by an exchange within 30 days of a final disciplinary or access denial action. Written notices also must be promptly verified, and it shall be the NFA's duty to monitor that those exchanges choosing to file written notices complete the verification process in a timely manner.¹⁰

B. NFA Reports and BASIC Query Capabilities

The NFA shall have a duty to provide the Commission with access to a Management Report so that the Commission can diligently carry out its legislative mandate. This Management Report must include the following for each disciplinary or access denial action:

- Name of Contributor (*i.e.*, an exchange, the NFA, or the Commission).
- Name of Respondent.
- Contributor Reference Number.
- Date of Decision or Order.
- Date of Notification of Member.
- Date of Notification of NFA.
- Date Available to BASIC Users.
- Total Number of Days for Data to be Released into BASIC (*i.e.* the number of

⁸The Commission is encouraging all exchanges to file electronic Regulation 9.11 notices with the NFA due to associated time and cost savings. See Advisory, note 10.

⁹The Commission expects that, pursuant to the Advisory, the exchanges will file all Regulation 9.11 notices with the NFA. However, if an exchange files a Regulation 9.11 notice with the Commission rather than the NFA, the Commission will immediately forward the notice to the NFA for processing.

¹⁰See Advisory, Section IV.C.

days from the date of an exchange final action until the date of exchange verification/certification).

- Changes Made to Records By Exchanges After the 30-day Period Prescribed in Regulation 9.11(a) Has Expired.
- Name of Staff Person Entering Data (*i.e.*, initials).

The Commission currently maintains a database of all exchange disciplinary and access denial actions ("9.11 database") which it uses to generate 42 standardized statistical reports and four standardized summary reports, including a management report.¹¹ Generally, the Commission has been generating these reports on a quarterly basis, except the management report, which is produced biweekly. As the Commission needs these reports for effective oversight of the domestic futures industry, the BASIC system must provide the Commission with the capability to generate these standardized reports, whenever needed, without having to submit requests to the NFA. The NFA therefore shall provide the Commission with unlimited local access to the BASIC system.¹²

The Commission also requires that BASIC have the capability to conduct specialized ad hoc queries of the NFA database. For instance, the Commission often needs data that pertain to a particular rule violation or exchange. The NFA has assured the Commission that, as part of BASIC's query capability development, the system will soon have the capacity to process customized queries and generate resulting reports. This Notice and Order hereby requires that BASIC's customized ad hoc query capability be developed in a manner which will allow the NFA to produce and deliver customized reports to the Commission, on demand, in approximately three business days from the day of request. All Commission requests for ad hoc queries and customized reports shall be made by designated Division staff members.

C. BASIC Maintenance

The NFA shall maintain, and serve as the official custodian of, records for

¹²Although the Commission's 9.11 database only includes exchange disciplinary and access denial actions, and thus, only these actions are included in the Commission's management report, BASIC also includes all NFA and Commission disciplinary and administrative actions. Therefore, the Commission believes that the Management Report generated from BASIC will best serve the Commission and the NFA if it includes the above specified information, where applicable, about all actions input into the BASIC system.

¹²"Unlimited local access" in this context means that the Commission shall have the capability to access all data in BASIC and BASIC's query features from its headquarters and regional offices.

exchange Regulation 9.11 filings. The NFA shall fulfill this obligation by continuing to maintain the BASIC system and further developing it as necessary to comply with the terms of this Notice and Order.

III. Authority

Pursuant to Section 8a(10) of the Act, the Commission has issued numerous orders authorizing the NFA to perform various portions of the Commission's registration functions and responsibilities under the Act.¹³ In this connection, the Commission previously has issued orders authorizing the NFA to perform registration processing functions with respect to floor brokers ("FBs") and floor traders ("FTs"), including: (1) Processing and, where appropriate, granting applications for registration under the Act; (2) issuing and terminating, where appropriate, temporary licenses; (3) processing the triennial review of registration information, periodic updates, terminations of trading privileges, and requests for withdrawal from registration; (4) establishing and maintaining systems of records regarding FBs and FTs and serving as official custodian of those records; (5) denying, conditioning, suspending, modifying, restricting or revoking the registration of any FB, FT, or applicant for registration in either category; and (6) granting the registration of any applicant for registration as an FB or FT, or maintaining the registration of any registered FB or FT who may be subject to statutory disqualification from registration without forwarding such cases to the Commission for review.¹⁴ Accordingly, the NFA has adopted, and

the Commission has approved, rules to govern the performance of those functions. For example, NFA Rule 501(b) pertains to the NFA's authority to deny, condition, suspend, restrict and revoke registration of floor brokers and floor traders. Additionally, Rule 505 sets forth procedures governing floor broker applicants, floor trader applicants, and registrants disqualified from registration under Sections 8a(2), 8a(3) or 8a(4) of the Act.¹⁵

This Notice and Order is in accord with the Commission's previous delegation to the NFA to perform registration processing functions with respect to FBs and FTs, in that, an individual's disciplinary history clearly is a factor that must be considered in any determination of his or her fitness to execute customer orders and personal trades on an exchange floor. Deeming the NFA as the custodian of all exchange Regulation 9.11 filings, and delegating to the NFA the responsibility for processing these notices and generating statistical and summary reports with the information amassed, should ensure that the NFA has the necessary information to continue to make appropriate registration determinations.

Moreover, the Commission anticipates that, when BASIC's customized ad hoc query capabilities are fully developed and operational, as discussed above, there will be no need to continue maintaining the Commission's 9.11 database. Thus, this delegation will facilitate the Commission performing its regulatory and oversight functions in a more efficient manner by eliminating a duplicative and time-consuming administrative duty.

IV. Conclusion and Order

In light of the NFA's and exchanges' requests for Commission authorization to allow exchanges to file Regulation 9.11 notices solely with the NFA, and for the NFA to assume complete responsibility for processing these notices and maintaining a database of all exchange, NFA, and Commission actions, the Commission has determined, in accordance with Section 8(a)(10) of the Act, to delegate to the NFA the authority to perform the following functions:

1. To process exchange disciplinary information filed with it by an exchange or

the Commission for inclusion in the BASIC system;

2. To provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information; to provide the Commission with the capability to generate standardized reports on the BASIC system; and to provide the Commission with ad hoc queries generated from BASIC;

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.

The NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Notice and Order shall affect the Commission's oversight authority of the exchanges' disciplinary programs. The Commission is relating all of its oversight authority, including its authority to review and to modify exchange disciplinary actions and to take enforcement or other remedial action against exchanges for noncompliance with Regulation 9.11. The NFA may submit to the Commission for clarification any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to implementation of this Notice and Order.

Issued in Washington, D.C. on July 19, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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¹³Section 8a(10) of the Act provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provisions of law, in accordance with rules adopted and submitted by that person to the Commission and subject to the provisions of the Act applicable to registrations granted by the Commission. 7 U.S.C. 12(a)(10) (1982).

¹⁴See 51 FR 25929 (July 17, 1986); 51 FR 34490 (September 29, 1986); 58 FR 19657 (April 15, 1993); 59 FR 38957 (August 1, 1994); and 62 FR 36050 (July 3, 1997). In addition, the Commission previously has authorized the NFA to perform registration functions, and to take adverse registration actions, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants, agricultural trade option merchants, associated persons of any of the foregoing entities, as well as applicants for registration in any of the aforementioned categories. See 49 FR 15940 (April 13, 1983); 49 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 48 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984), amended by 49 FR 45418 (November 16, 1984); 50 FR 34885 (August 28, 1985); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 63 FR 18821 (April 16, 1998); and 63 FR 63913 (November 17, 1998).

¹⁵The entire set of NFA rules governing registration can be found in the current "National Futures Association Manual," Vol. 5, No. 3, April 1, 1999. See Registration Rules, Rule 101 through Rule 801, pp. 8001-8057. After July 1, 1999, the NFA rules will be available on the NFA's website. See note 3.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Alternative Methods of Compliance With Requirements for Disclosure of Exchange Disciplinary Information and Access Denial Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing guidance concerning alternative methods of compliance with the requirements of Regulation 9.11(a) for the disclosure of information to the Commission by exchanges regarding disciplinary actions and access denial