Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC23

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investments in Farmers' Notes

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Farm Credit Administration (FCA, Agency, or we) is reopening the comment period on the proposed rule to amend the Agency's regulations governing investments in Farmers' notes so all interested parties will have more time to respond.

DATES: Please send your comments to the FCA by November 24, 2004.

ADDRESSES: Send us your comments by electronic mail to *reg-comm@fca.gov,* through the Pending Regulations section of our Web site at *http://www.fca.gov,* or through the government-wide Web site *http://www.regulations.gov.* You may also submit your comments in writing to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, or by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION: On September 14, 2004, we published a proposed rule in the **Federal Register** seeking public comment on amendments to regulations governing investments in Farmers' notes. The comment period expired on October 14, 2004. *See* 69 FR 55362, September 14, 2004. One member of the public has requested that the FCA provide interested parties an additional 30 days to comment. In response to this request, we are reopening the comment period until November 24, 2004, so all interested parties have more time to respond. Separately, the proposed rule contained an incorrect facsimile number. The correct number is (703) 734–5784. The FCA supports public involvement and participation in its regulatory and policy process and invites all interested parties to review and provide comments on the proposed rule.

Dated: October 20, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–23833 Filed 10–22–04; 8:45 am]

BILLING CODE 6705–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 171

RIN 3038–AC12

Rules Relating To Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Member Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') proposes to amend its rules relating to the scope of Commission review of National Futures Association (''NFA'') decisions in disciplinary, membership denial, registration and member responsibility actions. First, the Commission proposes to make a technical amendment to add the NFA's Hearing Committee to the list of committees covered by that section. This will conform Rule 171.1(b)(4) to changes in NFA's committee structure since part 171 was first adopted in October 1990. Secondly, the Commission proposes to add a new provision to exclude from Commission review any appeal concerning NFA suspension of a member for failing to pay a settlement or arbitration award (''award suspension cases''), unless there are extraordinary circumstances that would otherwise warrant Commission review.

DATES: Submit comments on or before November 24, 2004.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to (202) 418–5521, or by e-mail to *secretary@cftc.gov.* Reference should be made to ''NFA Decisions Review.'' Comments may also be submitted to the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thuy Dinh or Gail Scott, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5120.

SUPPLEMENTARY INFORMATION:

I. Scope of Commission Review

On June 15, 1990, the Commission published proposed rules establishing standards and procedures for its review of decisions of registered futures associations such as NFA in disciplinary actions, membership denial actions, registration actions and member responsibility actions. 55 FR 24254. Under the proposed rules, two categories of decisions were excluded from Commission review: (a) Disciplinary decisions in which the aggrieved party failed to pursue his or her appeal rights to the NFA Appeals Committee and no extraordinary circumstances warranted Commission review; and (b) decisions in arbitration actions. *See* 171.1(b)(1) and 171.1(b)(2), respectively. Two comment letters were received in response to the request for public comment. Of particular interest to the Commission was a letter it received from the NFA.[1]

In its letter, the NFA proposed that the Commission exclude any appeal arising from NFA suspension of an association member based solely on that member's failure to pay NFA dues or

[1] August 31, 1990 NFA Letter (''NFA Letter'').

arbitration awards.[2] In its final rules published on October 9, 1990, the Commission agreed that the suspension for non-payment of dues should not generally be considered a disciplinary action subject to Commission review and accordingly amended the proposed rules by adding 171.1(b)(3) under ''*Matters excluded*'' in the publication of its final rules. *See* 55 FR 41061. However, the Commission specifically rejected NFA's request to exclude from Commission review the suspension of a member for failing to pay arbitration awards, stating:

> The Commission is reluctant at this time * * * to exclude suspension of a member for failing to pay arbitration awards. When the Commission has excluded NFA arbitration decisions themselves from its review, one of the reasons it has done so is that these decisions can be reversed in the court system. In contrast, membership suspension raises somewhat different issues which generally go to the core of the Commission's role in reviewing NFA actions affecting membership status. Pending additional experience on the issue the Commission has determined not to exclude such NFA action from its appellate jurisdiction.

Id. at 41064.

From 1990 to the present, the Commission has received a total of five appeals related to the suspension of a member for failing to pay an arbitration award. The Commission first considered this issue in 1991, shortly after part 171 was adopted. In the initial case, the respondent asked the Commission to stay the suspension while he worked out a payment schedule. In rejecting the petition, the Commission stated, ''NFA's ministerial imposition of a pre-determined sanction for a member's failure to perform an undisputed duty of membership [to pay an arbitration award] is not, without more, a proper subject for Commission review.'' *Machin* v. *NFA*, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,041 at 37,893 (CFTC Apr. 25, 1991).

There were no other appeals of this nature until 1997, when the Commission dismissed an appeal from an award suspension where the appeal was predicated on alleged procedural and substantive errors in the underlying arbitration. The Commission stated, ''it would be inappropriate to consider either procedural or substantive errors in NFA's resolution of the issues raised in the arbitration.'' *Indelicato* v. *NFA* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,130 at 45,287 (CFTC Aug. 7, 1997). Citing *Machin*, the Commission further noted, ''the imposition of a suspension for failing to pay an arbitration award might be reviewable upon a showing that NFA acted arbitrarily in imposing the suspension. Here, however, as in *Machin*, petitioners have failed to establish such arbitrariness.'' *Id.*

The Commission's denials of review in three recent cases, from March 2003 to February 2004, have followed *Machin* and *Indelicato*, *i.e.*, declining to accept any appeal from this type of suspension unless it ''involves something more than the ministerial application of a pre-determined sanction.'' *See Howell* v. *NFA*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,702 at 55,993 (CFTC Feb. 27, 2004); *Mawhorr* v. *NFA*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,633 at 55,717 (CFTC Nov. 28, 2003); *Bunyard* v. *NFA*, CRAA 03–01 (CFTC Mar. 5, 2003). In *Bunyard*, the Commission stated, ''[only] an appeal raising a colorable claim that the NFA acted arbitrarily—or a similar claim that goes to the core of the Commission's role in ensuring the reliability of NFA's membership process—would fall within our jurisdiction.'' *Id.* at 2.

Against this backdrop, the NFA this year again proposed that the Commission exclude from its jurisdiction membership suspension cases based solely on the members' failure to pay arbitration awards. *See* April 15, 2004, NFA Letter at 5. The NFA discussed the Commission's disposition of these types of appeals during the last 14 years. Noting that the Commission has routinely rejected such appeals, the NFA proposes that the part 171 Rules be amended to reflect the Commission's actual practice, which is to limit review to cases presenting ''extraordinary circumstances.'' *Id.* at 4.

The Commission has reviewed its case history in this area and reached the following conclusions: (a) Such appeals are very infrequent; and (b) and the few cases that have reached the Commission did not raise a colorable challenge to the fundamental fairness of the proceeding, and fell squarely into the ''ministerial'' category that would not warrant Commission review. Based on this experience, the Commission proposes to exclude these routine matters from appellate review. The Commission would exercise its appellate jurisdiction in the extraordinary case where an appeal based on an award suspension involves ''something more than a ministerial application of a predetermined sanction.'' The amendment would be effected by adding a new section (5) to Rule 171.1(b) (''*Matters excluded*''). The proposed rule incorporates the Commission's language used in *Machin* and *Indelicato*.

II. Technical Amendment

Commission Rule 1.63 bars persons with certain disciplinary histories from serving on ''a disciplinary committee'' or in other leadership positions of any self-regulatory organization. Rule 171.1(b)(4) provides that NFA decisions made pursuant to Rule 1.63 are excluded from Commission review. As currently written, it forecloses appeals by an NFA member who is disqualified from service on NFA's ''Board of Directors, Business Conduct Committees or arbitration panels.'' Since Rule 171.1(b)(4) was promulgated, NFA has established a Hearing Committee as part of its disciplinary function. The Commission proposes a technical amendment to Rule 171.1(b)(4) to add the Hearing Committee to the list of committees covered by the rule.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires agencies that propose rules to consider the impact those rules will have on small businesses. With respect to persons seeking Commission reviews of NFA adjudicatory decisions, the proposed amendments would impose no additional regulatory burden. Commission review of NFA disciplinary and membership denial actions has been carried out pursuant to 17 CFR part 171 since 1990. These proposed amendments do not present any significant changes and would in fact ease the regulatory burden to some extent by providing greater certainty and predictability concerning the standards and procedures governing such review. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small businesses.

[2] The NFA presumed that ''actions in these areas would not be deemed disciplinary actions'' within Commission review under part 171. NFA Letter at 7. Section 10(g) of NFA's Code of Arbitration (Code) and Section 10(g) of NFA's Member Arbitration Rules (Member Rules) authorize NFA to summarily suspend an NFA member or associate if such member or associate fails to pay an NFA award or settlement reached in an NFA arbitration or mediation proceeding within 30 days. Members and associates receive a 30-day written notice before the suspension becomes effective, giving them a minimum of 60 days to satisfy the award or the settlement. Once the suspension becomes effective, a member or associate can get it lifted at any time by paying the amount due. A member or associate can also file a motion to vacate the award. A timely motion to vacate an award stays the suspension while the motion is pending in a court of competent jurisdiction.

B. Paperwork Reduction Act

The proposed amendments to part 171 rules do not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

C. Cost-Benefit Analysis

Section 15(a) of the Commodity Exchange Act, 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing a new regulation. The Commission understands that, by its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that 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 futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission can, in its discretion, give greater weight to any one of the five enumerated areas of concern and can, in its discretion, determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions, or accomplish any of the purposes, of the Commodity Exchange Act.

The proposed amendments to part 171 will not create any significant change in the Commission's appellate process. In fact, the proposed amendments should enhance the protection of market participants and the public by excluding from the Commission's review matters that represent routine enforcement of an NFA pre-determined sanction, freeing both the Commission's and NFA's resources. In addition, since the proposed amendments retain the Commission's ability to consider appeals that present ''extraordinary circumstances,'' public interest considerations for fundamental fairness and the Commission's supervisory authority regarding self-regulated organizations will not be compromised.

After considering these factors, the Commission has determined to propose the amendments to part 171, as set forth below.

List of Subjects in 17 CFR Part 171

Administrative practice and procedure, Commodity exchanges, Commodity futures.

In consideration of the following, the Commission proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 7 U.S.C. 4a, 12a, and 21.

2. Section 171.1 is amended in paragraph (b)(4) to add '', Hearing Committee'' between ''Business Conduct Committees'' and ''or arbitration panels''; and replacing ''.'' with '';'' at the end of (b)(4); and by adding new paragraph (b)(5):

§ 171.1 Scope of rules.

* * * * *

(b) * * *

(5) Suspension of a member or a person associated with a member based solely on that person's failure to pay an arbitration award or a settlement agreement resulting from an arbitration action brought pursuant to Section 17(b)(10) of the Act or rules and regulations of the National Futures Association, or a settlement agreement resulting from a mediation proceeding sponsored by the National Futures Association, unless there are extraordinary circumstances that involve something more than the ministerial application of a predetermined sanction, or raise a colorable claim that the NFA has acted arbitrarily.

* * * * *

Issued in Washington, DC on the 19th of October 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–23828 Filed 10–22–04; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[REG–163679–02]

RIN 1545–BB72

Qualified Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on Monday, July 26, 2004 (69 FR 44476), relating to the gift tax special valuation rules and qualified interests.

FOR FURTHER INFORMATION CONTACT: Juli Ro Kim (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–163679–02), that is the subject of this correction is under section 2702 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–163679–02), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–163679–02), which was the subject of FR Doc. 04–16593, is corrected as follows:

On page 44476, column 2, in the preamble, under the caption **DATES**, line 2, the language ''must be received by October 21, 2004.'' is corrected to read ''must be received by October 25, 2004.''

Guy R. Traynor,

Federal Register Liaison, Publication and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures & Administration).

[FR Doc. 04–23748 Filed 10–22–04; 8:45 am]

BILLING CODE 4830–01–P