(c) *Confidentiality of statistics.* Information submitted pursuant to this subpart will be treated in accordance with the provisions of 50 CFR part 600 of this title.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') has adopted a new Regulation 1.69 that implements the statutory directives of Section 5a(a)(17) of the Commodity Exchange Act (''CEA'') as it was amended by Section 217 of the Futures Trading Practices Act of 1992 (''FTPA'').[1]

New Commission Regulation 1.69 requires self-regulatory organizations (''SRO'') to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating or voting on certain matters where the member has either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. This final rulemaking also has amended Commission Regulations 1.41 and 1.63 to make modifications made necessary by new Commission Regulation 1.69.

EFFECTIVE DATE: March 5, 1999.

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SUPPLEMENTARY INFORMATION

I. Introduction

Section 217 of the FTPA amended Section 5a(1)(17) of the CEA to ''provide for the avoidance of conflict of interest in deliberations by the governing board and any disciplinary and oversight committee.'' [2] On May 3, 1996, the Commission published for pubic comment in the **Federal Register** a proposed new Regulation 1.69 and related amendments to existing Commission Regulations 1.41 and 1.63 which would have required SROs to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating and voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome.[3] In response to that proposed rulemaking release, the Commission received letters from eleven commenters. After reviewing those comments, the Commission decided to incorporate into its rulemaking many of the suggestions made by the commenters and to issue for pubic comment re-proposed versions of Regulation 1.69 and amended Regulations 1.41 and 1.63. The Commission published its re-proposed rulemaking in the **Federal Register** on January 23, 1998.[4] That release extensively discusses the comments that were made on the originally proposed rulemaking, indicates whether and how the re-proposed rulemaking responds to the comments and explains the Commission's reasons for proposing a re-proposed version of the rulemaking. The comment period for the re-proposed rulemaking expired on March 25, 1998.

II. Comments Received

The Commission received ten comment letters in response to its re-proposed rulemaking. The comment letters were submitted by five futures exchanges (the Chicago Board of Trade (''CBT''), the Chicago Mercantile Exchange (''CME''), the Coffee, Sugar & Cocoa Exchange, Inc. (''CSCE''), the Minneapolis Grain Exchange (''MGE''), and the New York Mercantile Exchange (''NYMEX'')); a futures clearing organization (the Board of Trade Clearing Corporation (''BOTCC'')); two trade associations (the Futures Industry Association (''FIA'') and the National Grain Trade Council (''NGTC'')); a futures commission merchant (American Futures Group, Inc. (''AFG'')) and Mr. Evan Tucker, an individual who was formerly an associated person with AFG.

The Commission has carefully reviewed these comments and has decided to issue new Regulation 1.69 and amended Regulations 1.41 and 1.63 as final with certain modifications from the re-proposed version of the rulemaking. The following sections of this release analyze the Commission's final rulemaking. Each section describes a provision of the Commission's reproposed rulemaking, discusses comments which were made on that particular provision, indicates how the provision has been adopted in the final rulemaking, and explains the Commission's rationale for adopting the provision. (For ease of reference, the re-proposed rulemaking will be referred to as the ''proposed'' rulemaking throughout the remainder of this release.)

III. Final Rulemaking

A. Definitions (Regulation 1.69(a))

1. Disciplinary Committee (Regulation 1.69(a)(1))

As proposed, Regulation 1.69(a)(1) defined ''disciplinary committee'' to mean ''any person or committee of persons, or any subcommittee thereof'' that is authorized by an SRO ''to issue disciplinary charges to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof'' in any case involving a violation of an SRO's rules. The proposed definition excluded persons who were individually authorized by an SRO to impose sanctions summarily for decorum-type rule violations. CBT, CME, CSCE, FIA and NYMEX each commented that the definition should exclude any person or committee of persons that summarily imposed minor disciplinary fines. These commenters contended that imposing conflict of interest restrictions on anyone taking summary actions, whether a single person or a committee, would be cumbersome for SROs to implement.

The Commission has reviewed these comments and concurs that applying conflict of interest requirements to SRO disciplinary authorities when they take summary actions for minor rule violations could be administratively burdensome and might hamper the SROs' ability to take quick, decisive actions in these circumstances. Accordingly, the Commission has determined to establish a disciplinary committee definition that would exclude committees and persons who summarily issue minor penalties for violating rules regarding ''decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.''

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[1] Pub. L. No. 102–546, section 217, 106 Stat. 3590 (1992).

[2] For the purposes of this release, the term ''committee'' generally will be used to include governing boards, disciplinary committees and oversight panels unless otherwise specified.

[3] 61 FR 19869 (May 3, 1996).

[4] 61 FR 3492 (Jan. 23, 1998).

2. Family Relationship (Regulation 1.69(a)(2))

As further discussed below, proposed Regulation 1.69(b)(1)(i)(E) prohibited committee members from deliberating and voting on committee matters in which they had a ''family relationship'' with the matter's named party in interest. For these purposes, proposed Regulation 1.69(a)(2) defined ''family relationship'' to mean a person's ''spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.''

CBT commented that the inclusion of ''former spouses'' in the definition ran counter to the approach taken in proposed Regulation 1.69(b)(1)(i)(D) where conflicts of interests were limited to current, ''ongoing'' business relationships with the named party in interest. The Commission believes that the two types of relationships cited by the CBT are distinguishable. The rationale for limiting conflict of interest requirements to committee members with ''ongoing'' business relationships is that, when a member and a matter's named party in interest have an ongoing business relationship, a committee action that could impact the party financially also could redound to the financial advantage or disadvantage of anyone who is doing business with the party at that point in time, including the committee member. Once a business relationship between two parties no longer exists, however, presumably the financial health of the two parties no longer has any degree of interdependence. By contrast, a committee member's relationship with a former spouse may have emotional and financial implications that continue after their marriage, especially if there is any sort of monetary support arrangement between the former spouses. Accordingly, the Commission has determined to include former spouses in the final definition of family relationship and to adopt the definition as proposed.

3. Governing Board (Regulation 1.69(a)(3))

As proposed, Regulation 1.69(a)(3)'s definition of ''governing board'' included any SRO ''board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof,'' such as an executive committee that was authorized to ''take action or to recommend the taking of action'' on behalf of its SRO. The CBT commented that the definition should not include governing board subcommittees because any potential harm from any conflict of interest on such a subcommittee would be cured by the fact that its actions would be subject to the independent review and oversight of a governing board. The Commission believes that, although board subcommittee actions usually have to be ratified by governing boards, oftentimes recommendations of such subcommittee are the primary influence on board decision. Accordingly, in order to advance the integrity of the SRO committee decision-making process, the Commission has decided to apply its conflict of interest restrictions to governing board subcommittees and to adopt the same governing board definition as proposed.

4. Oversight Panel (Regulation 1.69(a)(4))

In the proposed rulemaking, the Commission defined ''oversight panel'' as an SRO committee authorized to ''recommend or establish policies or procedures with respect to the [SRO's] surveillance, compliance, rule enforcement, or disciplinary responsibilities.'' [5] The CBT and NYCE commented that this definition was too broad and should not include committees which recommend policies as such a definition would deter people, inside and outside of the futures industry, from serving on task forces and planning committees that formulate ideas that are helpful to the SROs.

The Commission believes that SRO policies with respect to surveillance, compliance, rule enforcement and disciplinary responsibilities are an integral part of the self-regulatory process and that persons who are entrusted with recommending such policies should be free from conflicts of interests. Accordingly, the Commission has decided to adopt the proposed definition of oversight panels.

5. Member's Affiliated Firm (Regulation 1.69(a)(5))

Under proposed Regulation 1.69(a)(5), a ''member's affiliated firm'' was defined as any firm at which a committee member was either: (1) A principal, as defined by Regulation 3.1(a), or (2) an employee. The term became operative under proposed Regulation 1.69(b)(2)(iii) which required SROs to review positions at a committee member's ''affiliated firm'' when determining whether the member had a direct and substantial financial interest in the outcome of a significant action. CME commented that the ''member's affiliated firm'' definition should be limited to firms where the member was a principal. CME contended that firms which employ committee members should not be included in the definition as firm employees have much less knowledge regarding their firms' positions than do principals. The Commission believes the potential for a committee member to be influenced by an employment relationship is sufficient to warrant his or her disqualification from deliberating and voting on significant actions which might impact the member's employer. Many firm employees have as much knowledge of their firm's positions as do the firm's principals. In fact, the Commission believes that in some instances an employment relationship may have an even greater influence on a committee member than an ownership relationship in that employees may be under the control of their employing firm. Accordingly, the Commission has determined not to modify this aspect of the definition of ''member's affiliated firm'' but rather to adopt the definition as proposed.

6. Named Party in Interest (Regulation 1.69(a)(6))

In its proposed rulemaking, the term ''named party in interest'' was defined to mean a party who was ''the subject of any matter being considered'' by an SRO committee. In its comment letter, CBT suggested that ''named party in interest'' be defined to mean a ''person who is identified by name to a governing board, disciplinary committee or oversight panel as the subject of a matter to be considered by it.'' The Commission believes the CBT's suggestion would help to clarify the named party in interest definition. Accordingly, the Commission has adopted the substance of CBT's proposed definition with the modification that the provision include any ''person or entity'' that is identified by name as a subject of a committee action. In adopting this definition of ''named party in interest,'' the Commission reminds the SROs that it would be inconsistent with the intent of Regulation 1.69 for SROs to shield the identities of named parties in interests from committee members in order to circumvent the conflict of interest requirements.

7. Self-Regulatory Organization (Regulation 1.69(a)(7))

Proposed Regulation 1.69 defined SROs to include exchanges, clearing organizations and registered futures associations (''RFAs'')(with RFAs being excluded from the definition for the purposes of Regulation 1.69(b)(2)

[5] *See* proposed Commission Regulation 1.69(a)(4).

''financial interest'' conflicts of interest). BOTCC and CBT both objected to the inclusion of clearing organizations in the definition of SRO on the ground that CEA Section 5a(a)(17), Regulation 1.69's statutory enabling provision, only applies to contract markets and not clearing organizations.

The Commission believes that BOTCC's and CBT's suggestions would lead to significant inconsistencies in the application of Regulation 1.69. Some contract markets have in-house clearing organizations (*e.g.*, CME and NYMEX), while other contract markets are cleared by independent clearing organizations (*e.g.*, CBT and CSCE). Applying Regulation 1.69 to clearing organizations, as well as contract markets, would ensure that there would not be differing treatment of contract markets based on whether or not they had an in-house or independent clearing mechanism.

The Commission notes that, while CEA Section 5a(a)(17) only specifies ''contract markets,'' the provision also requires that its conflict of interest restrictions shall apply to committees handling certain types of margin changes. Margin levels in the futures industry are established by both contract markets and clearing organizations. The Commission also notes that there have been previous occasions when CEA requirements for contract markets have been applied to clearing organizations. For example, Section 5a(a)(12)(A) of the CEA mandates Commission review of ''contract market'' rules while Commission Regulation 1.41, which establishes procedures for Commission review of proposed rules, specifically includes clearing organizations within its definition of contract markets for these purposes. In addition, clearing organizations already are subject to regulatory requirements that are comparable to Regulation 1.69 such as Regulation 1.41(f)'s emergency action provisions and Regulation 1.63's prohibition on committee service by persons with disciplinary histories.

For each of the above reasons, the Commission has determined that it is appropriate to make clearing organizations subject to Regulation 1.69 and to include them in the definition of SRO.

8. Significant Actions (Regulation 1.69(a)(8))

Proposed Regulation 1.69(b)(2) applied conflict of interest restrictions to SRO committees whenever they considered any significant action. The term ''significant action'' was proposed to mean: (1) Actions or rule changes that address Regulation 1.41(a)(4) non-physical emergencies; (2) margin changes that respond to extraordinary market conditions, such as ''an actual or attempted corner, squeeze, congestion or undue concentration of positions''; and (3) margin changes that are likely to have a substantial effect on contract prices of any contract traded or cleared at the particular SRO. BOTCC and CBT commented that this provision should track the language of the CEA and that, accordingly, the rulemaking should pertain only to those contract market margin changes that respond to extraordinary market conditions that are likely to have a substantial effect on contract prices.

The Commission believes that margin changes that are made in response to corners, squeezes, congestion, or undue concentrations of positions serve important market integrity purposes and that committee members should not be influenced by their personal interests when considering such decisions. Accordingly, the Commission has determined not to reduce the scope of the significant action definition, but rather to adopt the provision as it was proposed.

B. Self-Regulatory Organization Rules (Regulation 1.69(b))

Proposed Commission Regulation 1.69(b) required SROs to adopt rules prohibiting committee members from deliberating and voting on certain types of matters as to which they had conflicts of interest. Proposed Regulation 1.69(b)(1) restricted committee participation for members who had a relationship with a matter's named party in interest. Proposed Regulation 1.69(b)(2) restricted committee participation for members who had a ''direct and substantial financial interest'' in certain types of committee actions that do not require prior Commission review and approval. Proposed Commission Regulations 1.69(b)(1) and (2) also mandated certain procedures that SROs must follow when making a determination as to the existence of a conflict of interest.

1. Conflict of Interest Due to a Relationship With Named Party in Interest (Regulation 1.69(b)(1))

a. Nature of Relationship (Regulation 1.69(b)(1)(i))

Under proposed Regulation 1.69(b)(1)(i), SRO committee members were required to abstain from deliberating and voting on any matter where they had a significant relationship with the ''named party in interest.'' These relationships would include family, employment, broker association and ''significant, ongoing business'' relationships. In its comment letter, the CBT noted that CEA Section 5a(a)(17) limits this abstention requirement to ''confidential'' deliberations and voting. Accordingly, CBT suggested that Regulation 1.69(b)(1)(i) should be revised to conform with Section 5a(a)(17) in this regard.

Although the CEA only mandates that, at a minimum, committee members must abstain from confidential deliberations on matters in which they have a relationship with a named party in interest, the Commission believes that adopting a more prophylactic approach in these types of matters would ensure that SRO committees could not undermine the intent of this provision by declaring ''open'' committee meetings in lieu of applying conflict of interest restrictions. Accordingly, the Commission has decided to adopt Regulation 1.69(b)(1)(i) as proposed and to apply its requirements to all committee deliberations, regardless of whether they are confidential or not.

CME, CSCE and NYMEX commented that the Commission should clarify Regulation 1.69(b)(1)(i) so that it does not apply to committee actions such as price change register revisions and the certification of the late submission of pit cards. The commenters contended that these situations already are addressed by their own existing procedures and that, accordingly, a Commission rulemaking in this area would be an unnecessary administrative encumbrance.

The fact that these commenters already have their own conflict of interest requirements for price change register revisions and late pit card certifications does not obviate the need for the Commission to establish an industry-wide standard in this area. In addition, the existence of such requirements at these exchanges also would seem to contradict the contention that Commission-established requirements would be administratively cumbersome to enforce. Accordingly, in connection with this provision, the Commission wishes to clarify that, if a particular, identifiable person approaches an SRO committee member to request sign-off on a price change register revision or a late pit card certification, Regulation 1.69(b)(1) should apply, and the committee member should abstain from handling the matter if his or her relationship with

the requesting member falls within the parameters of Regulation 1.69(b)(1)(i).[6]

The Commission recognizes that a floor committee would not be subject to Regulation 1.69(b)(1)'s requirements when taking summary disciplinary actions for minor rule violations,[7] while the same committee would be subject to Regulation 1.69(b)(1)'s requirements when taking actions such as price change register revisions and the certification of the late submission of pit cards. This distinction reflects the important regulatory interests implicated by these latter actions but not summary actions for minor rule violations.

AFG and Mr. Tucker each suggested that regulation 1.69(b)(1)(i)'s restrictions should extend to relationships where a committee member and a matter's named party in interest may have shared liability for facts that are under consideration by a committee. AFG and Mr. Tucker indicated that their suggestions were prompted by a particular SRO enforcement case in which a member of the disciplinary committee hearing the case potentially shared liability with the case's named party. The Commission believes that the proposed provision would be difficult to formulate and would likely be overbroad in application. In addition, the types of relationships described by the commenters would probably qualify as employment or significant business relationships and, thus, would already appear to qualify as one of Regulation 1.69(b)(1)(i)'s list of disqualifying relationships.

MGE commented that, because of its small size, some of its broker associations contain practically all of the exchange's floor brokers and consequently, under proposed Regulation 1.69(b)(1)(i)(C), a large number of MGE committee members would be disqualified in matters where a floor broker was a named party in interest. In order to address possible hardships that Regulation 1.69 may impose on smaller futures exchanges, the Commission has decided to consider granting small exchanges exemptions from certain provisions of Regulation 1.69 on a case-by-case basis. In making a request for such an exemption, the requesting exchange must: (1) Demonstrate that the pertinent provision of Regulation 1.69 would create a material hardship and (2) provide for alternative procedures that are not inconsistent with the policy considerations underlying Regulation 1.69.

b. Disclosure of Relationship (Regulation 1.69(b)(1)(ii))

Proposed Regulation 1.69(b)(1)(ii) required that SRO committee members disclose to the appropriate SRO staff whether they had any one of the relationships listed in Regulation 1.69(b)(1)(i) with respect to a matter's named party in interest. No commenter addressed this provision, and the Commission has determined to adopt Regulation 1.69(b)(1)(ii) as proposed.

c. Procedures for Determination (Regulation 1.69(b)(1)(iii))

Proposed Regulation 1.69(b)(1)(iii) required that SROs establish procedures for determining whether committee members had a disqualifying relationship with a matter's named party in interest. The provision mandated that the determination must be based upon: (1) information provided by the committee members to the appropriate SRO staff (Regulation 1.69(b)(1)(iii)(A)), and (2) ''any other source of information that is reasonably available'' to the SRO (Regulation 1.69(b)(1)(iii)(B)).

The CBT, CSCE and NYMEX each proposed amendments to the clause covering ''any other source of information reasonably available'' to the SRO. CBT suggested that SROs be able to rely upon ''any information of which the [SRO] has actual knowledge.'' CSCE suggested that SROs be able to rely upon ''any information otherwise known to the SRO in the ordinary course of business.'' Finally, NYMEX proposed that SROs be permitted to rely upon information in their membership and broker association files.

The Commission believes that CBT's and CSCE's respective proposed changes could create an undesirable incentive for SROs to remain ignorant of their committee members' relationships. On the other hand, the Commission believes that NYMEX's proposed change is too limited in that it would permit SROs to overlook committee member information they may hold somewhere other than in their membership or broker association files.

In order to avoid the ambiguities and compliance issues created by proposed Regulation 1.69(b)(1)(iii)(B)'s knowledge standard, the Commission has determined to establish a more defined, narrower scope for SRO reviews undertaken to determine whether committee members have a conflict of interest with a named party in interest. Accordingly, in addition to the particular information required to be provided to SROs by committee members pursuant to Regulation 1.69(b)(1)(iii)(A), final Regulation 1.69(b)(1)(iii)(B) requires that SROs review information that is ''held by and reasonably available'' to them.

NYMEX also suggested that SROs be permitted to take into account the ''exigency'' of a committee action in determining what type of information to review when assessing committee member relationships with named parties in interest. The Commission has determined to adopt NYMEX's suggestion and has incorporated an ''exigency'' modifier into final Regulation 1.69(b)(1)(iii). The Commission notes that the revision parallels what proposed Regulation 1.69(b)(2)(iv) already provided in connection with SRO determinations of conflict due to financial interests in significant actions.

2. Conflict of Interest Due to a Financial Interest in a Significant Action (Regulation 1.69(b)(2))

Proposed Regulation 1.69(b)(2) required committee members to abstain from ''significant actions'' by their committees, as that term is defined in Regulation 1.69(a), if the member knowingly had a direct and substantial financial interest in the outcome of the matter.

While most of the comments addressing proposed Commission Regulation 1.69(b)(2) focused on the provisions that mandated SRO procedures for implementing this provision, *See* Regulations 1.69(b)(2)(ii) through (iv), MGE and NGTC both contended that Regulation 1.69(b)(2)'s basic restriction would adversely impact small exchanges. They commented that small exchanges often have a single dominant contract that most of the exchange members (and hence most committee members) trade. According to these commenters, apply Regulation 1.69(b)(2) to significant actions concerning these contracts would cause a large number of committee members to abstain and would cripple the decisionmaking ability of small exchange committees.

The Commission is prepared to consider granting small exchanges exemptions from Regulation 1.69(b)(2), on a case-by-case basis. In applying for such an exemption, an exchange must: (1) Demonstrate that Regulation 1.69(b)(2) would create a material hardship (*e.g.*, an exchange that has a single large contract which is traded by a large majority of its members), and (2) provide for alternative procedures that

[6] The Commission notes that committees which act in these capacities would qualify as oversight panels under Regulation 1.69(a)(4), rather than disciplinary committees or governing boards.

[1] *See* discussion of Regulation 1.69(a)(1)'s definition of disciplinary committee in Section III.A.1 above.

are not inconsistent with the policy considerations underlying Regulation 1.69(b(2).

a. Nature of Interest (Regulation 1.69(b)(2)(i))

Proposed Commission Regulation 1.69(b)(2)(i) required that SRO committee members abstain from committee deliberations and voting on certain matters in which they ''knowingly [had] a direct and substantial financial interest.'' The proposed restriction applied whenever a committee considered significant actions.[8] No commenter addressed this provision in particular. Accordingly, the Commission has determined to adopt Regulation 1.69(b)(2)(i) as proposed. In adopting this provision, however, the Commission emphasizes that Regulation 1.69(b)(2)(i) itself states that the bases for a committee member's direct and substantial financial interest in a significant action are limited to exchange and non-exchange positions that ''reasonably could be expected to be affected by the action.'' SROs should follow this standard in establishing the level of disclosure made by committee members pursuant to Regulation 1.69(b)(2)(ii) and the level of position review made by them and their staffs pursuant to Regulations 1.69(b)(2) (iii) and (iv).[9]

b. Disclosure of Interest (Regulation 1.69(b)(2)(ii))

Proposed Regulation 1.69(b)(2)(ii) required that, prior to the consideration of a significant action, committee members must disclose to appropriate SRO staff prescribed position information that was ''known'' to the committee member.

BOTCC, CBT, CME and FIA each suggested that Regulation 1.69 specifically permit a committee member to recuse himself/herself from deliberating and voting on a matter without having to make the required disclosure pursuant to Regulation 1.69(b)(2)(ii). The commenters' suggestions are consistent with the Commission's original intent in proposing Regulation 1.69(b)(2)(ii). Accordingly, the Commission has made responsive changes to the final provision.

[8] The definition of such significant actions is established by final Regulation 1.69(a)(8) and is discussed above in Section III.A.8.

[9] BOTCC, CBT and CME each requested clarification on this particular point in their respective comment letters.

c. Procedure for Determination (Regulation 1.69(b)(2)(iii))

In determining a committee member's financial interest in a significant action, proposed Regulation 1.69(b)(2)(iii) (A) through (D) required SROs to review certain types of positions held at the SRO by the member, the member's affiliated firm, and customers of the member's firm in any contract that could be affected by the committee's significant action. In addition, Regulation 1.69(b)(2)(iii)(E) required SROs to review ''any other types of positions, whether at that [SRO] or elsewhere,'' that the SRO ''reasonably expect[ed] could be affected by the significant action.''

CBT commented that the review of positions held outside of the particular SRO should be limited to positions owned or controlled by the committee member himself or herself and should not include outside positions held by the member's firm or customers of the member's firm. The Commission concurs with this suggestion insofar as it pertains to positions held outside of an SRO by customers of a committee member's firm. Such positions would be both difficult to ascertain and would be less likely to influence a committee member's decisionmaking. In contrast, positions held by a committee member are certainly less difficult to ascertain, and both positions held by a member and in the proprietary accounts of a member's affiliated firm are more likely to influence a committee member's decisionmaking. Accordingly, the Commission has amended final Regulation 1.69(b)(2)(iii)(E) to require SRO review of outside positions held in a member's personal accounts or the proprietary accounts of a member's affiliated firm.

CME suggested that it was not necessary to have an SRO conduct the same level of review for positions held outside of the SRO as for positions held at the SRO and that Regulation 1.69(b)(2)(iii) should be appropriately amended. The Commission does not believe that it is appropriate to establish some lessened level of review standard for positions held outside of the subject SRO. Regulation 1.69(b)(2) already includes provisions that serve the same purpose. For example, Regulation 1.69(b)(2)(i) limits the bases for conflict of interest determinations to positions that ''reasonably'' could be expected to be affected by a significant action. In addition, Regulation 1.69(b)(2)(iv) states that SROs may take into account ''the exigency of the significant action'' when undertaking a review of the various sources of information to be considered when making a conflict of interest determination.

d. Bases for Determination (Regulation 1.69(b)(2)(iv))

Proposed Regulation 1.69(b)(2)(iv) specified what sources of information SROs should rely upon in determining whether a committee member had a conflict of interest in a significant action. Generally, the provision directed SROs to consult: (1) The most recent large trader reports and clearing records available to the SRO (Regulation 1.69(b)(2)(iv)(A)); (2) position information provided to the SRO by the committee member (Regulation 1.69(b)(2)(iv)(B)); and (3) any other source of information that was ''held by and reasonably available'' to the SRO, whether it be from inside or outside the SRO (Regulation 1.69(b)(2)(iv)(C)).

CBT and CSCE each suggested replacement language for Regulation 1.69(b)(2)(iv)(C)'s requirement that SROs consult ''any other source of information that is reasonably available'' to the SRO. CBT suggested that SROs be permitted to rely on ''any information of which the [SRO] has actual knowledge.'' CSCE suggested that SROs be able to rely on ''any information otherwise known to [the SRO] in the ordinary course of business.''

The Commission does not believe that either of these suggested review standards would be appropriate in that they could create a disincentive for SROs to remain apprised of their committee members' positions. The Commission has adopted an alternative revision to Regulation 1.69(b)(2)(iv)(C) which provides that SROs consult ''any other source of information that is held by and reasonably available'' to the SRO. The Commission notes that this revision parallels the standard which the Commission has adopted in Regulation 1.69(b)(1)(iii) with respect to information that SROs should consult in determining whether a committee member has a conflict due to a relationship with a matter's named party in interest.

3. Participation in Deliberations (Regulation 1.69(b)(3))

CEA Section 5a(a)(17) recognizes that in some instances a committee member with a conflict in a particular committee matter also might have special knowledge or experience regarding that matter. Accordingly, in a limited number of circumstances, proposed Commission Regulation 1.69(b)(3) permitted SRO committees to allow a committee member, who otherwise would be required to abstain from

deliberations and voting on a matter because of a conflict, to deliberate but not to vote on the matter. This ''deliberation exception'' was only made applicable to matters in which a committee member had a conflict of interest as the result of having a ''direct and substantial financial interest'' in the outcome of a vote on a significant action under Regulation 1.69(b)(2). Consistent with Section 5a(a)(17), proposed Regulation 1.69(b)(3)'s deliberation exception did not apply to matters in which a committee member had a conflict due to his or her relationship with a matter's named party in interest under Regulation 1.69(b)(1).

In determining whether to permit a ''conflicted'' committee member to deliberate on a matter, proposed Regulation 1.69(b)(3) required that the presiding committee consider a number of factors including: (1) Whether the member had unique or special expertise, knowledge or experience in the matter involved, and (2) whether the member's participation in deliberations would be necessary for the committee to obtain a quorum.[10] Proposed Regulation 1.69(b)(3)(iii) also required that when SRO committees determine whether to grant a deliberation exception, they ''must fully consider the position information'' which evidences the committee member's financial interest in the matter.

The Commission has decided to retain the basic requirements of proposed Regulation 1.69(b)(3)'s deliberation exception provision in this final rulemaking. The Commission believes that the provision strikes a reasonable balance between ensuring that SRO committees make well-informed decisions while minimizing the influence of a committee member's potential bias or self-interest in a matter.

Only two commenters addressed proposed Regulation 1.69(b)(3). Specifically, CBT and CSCE commented that Regulation 1.69(b)(3)(iii) should not be interpreted to mean that a member's precise position information must be disclosed to the entire SRO committee and that, instead, some sort of general summary of the member's positions should be sufficient disclosure.

The disclosure of a ''conflicted'' committee member's position information to the committee, pursuant to Regulation 1.69(b)(3)(iii), generally serves two purposes. First, it enables the committee to evaluate the depth of a committee member's financial interest in the outcome of a significant action and to balance whether his or her participation in deliberations would be worthwhile. Second, in the case of a committee member who receives a deliberation exception, the disclosure of the member's interest to his or her fellow committee members should help to mitigate any prejudicial influence such member's views could have on the other members during the course of deliberations. In light of this important need for accurate position information, the Commission does not believe that it would be appropriate for SRO committees to make deliberation exception determinations based upon a general summary of a conflicted member's position information. Accordingly, the Commission has not revised this provision in the final rulemaking.

4. Documentation of Determination (Regulation 1.69(b)(4))

Whenever an SRO committee made a conflict of interest determination, proposed Regulation 1.69(b)(4) required that certain information regarding the abstention determination be recorded. Such a record was required to indicate: (1) The committee members who attended the meeting (Regulation 1.69(b)(4)(i)), (2) the name of any committee member who was directed to abstain or who voluntarily recused himself or herself and the reasons why (Regulation 1.69(b)(4)(ii)), (3) a listing of the position information reviewed for each committee member (Regulation 1.69(b)(4)(iii)), and (4) in those instances when a committee member was granted a deliberation exception, a general description of the views expressed by the member during the committee's deliberations on the underlying significant action (Regulation 1.69(b)(4)(iv)).

The CSCE commented that, under the proposal, committee members who received a deliberation exemption would be ''chilled'' from expressing their opinions by the requirement that their views be particularly recorded. The Commission concurs with CSCE's comment and, accordingly, has deleted this requirement from final Regulation 1.69.

C. Amendments to Other Commission Regulations Made Necessary by Final Commission Regulation 1.69

Section 213 of the FTPA amended Section 5a(a)(12)(B) of the CEA to require that the Commission issue regulations establishing ''terms and conditions'' under which contract markets may take temporary emergency actions without prior Commission approval. Section 5a(a)(12)(B) and Regulation 1.41(f), the Commission's implementing regulation, require that any such temporary emergency action be adopted by a two-thirds vote of a contract market's governing board. In recognition of the fact that governing board members may be required to abstain from deliberations and voting on such actions under contract market rules implementing Regulation 1.69, the Commission, as part of its proposed conflict of interest rulemaking, proposed to amend Regulation 1.41(f) to provide that such abstaining board members not be included in determining whether a temporary emergency action has been approved by a two-thirds majority of a governing board. Abstaining board members are, however, included for quorum purposes so that the existence of conflicted members will not prevent a board from taking temporary emergency actions.

No commenters addressed this provision, and the Commission has determined to amend Regulation 1.41(f)(10) as proposed.

The Commission also proposed to amend Commission Regulation 1.63's definition of ''disciplinary committee'' so that it more closely conformed with Regulation 1.69's definition of the same term. As indicated above in Section III.A.1., the Commission now has revised Regulation 1.69(a)(1)'s definition of disciplinary committee to exclude committees and persons who summarily issue minor penalties for minor offenses regarding ''decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.'' This revision was made in response to the concern that the application of conflict of interest requirements to SRO disciplinary authorities when they take summary actions for minor rule violations would be administratively burdensome and might hamper the SROs' ability to take quick and decisive actions in such circumstances. The same concerns are not presented by Regulation 1.63 which generally prohibits persons with disciplinary histories from serving on disciplinary committees for at least three years after the date of the

[10] The Commission, in its proposed rulemaking, indicated that it believed that, given the factors that must be considered, deliberation exception determinations should be made by the committee involved, rather than SRO staff. For any particular SRO committee matter, the committee members themselves would be in a better position than SRO staff to assess their individual levels of expertise in the matter and their need for input during deliberations from the committee member who otherwise would be required to abstain. The Commission continues to adhere to this view, and no commenters on the proposed rulemaking addressed this issue. Accordingly, final Regulations 1.69 specifically confers the responsibility for deliberation exception determinations on the SRO committee involved.

underlying disciplinary judgment or settlement agreement. Accordingly, the Commission has determined to adopt Regulation 1.63(a)(2)'s disciplinary committee definition as proposed. The definition is identical to Regulation 1.69's disciplinary committee definition, except that Regulation 1.63's definition does not exclude committees that handle summary disciplinary matters.

Finally, the CME in its comment on proposed Regulation 1.69 suggested that Commission Regulation 8.17(a)(1), which already imposes a general conflict of interest requirement on disciplinary committees, be amended to clarify that Regulation 1.69 pre-empts Regulation 8.17(a)(1). The Commission does not believe that compliance with Regulation 1.69 will necessarily constitute compliance with Regulation 8.17(a)(1). Specifically, instances when a disciplinary committee member is a witness to the alleged misconduct, testifies about the alleged misconduct or investigates the alleged misconduct would not constitute a conflict of interest pursuant to Regulation 1.69 but would possibly be a conflict of interest pursuant to Regulation 8.17(a)(1) requiring the member's recusal from the disciplinary committee. *See In the Matter of Malato,* [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,084, at 34,704 (CFTC Dec. 22, 1987). Accordingly, for these reasons, the Commission has determined not to amend Regulation 8.17(a)(1) as suggested by the CME.

D. Conclusion

The Commission believes that final Regulation 1.69 and the amendments to Regulation 1.41 and 1.63 meet the statutory directives of Section 5a(a)(17) of the CEA as it was amended by Section 217 of the FTPA. The rulemaking establishes guidelines and factors to be considered in determining whether an SRO committee member is subject to a conflict of interest which could potentially impinge on his or her ability to make fair and impartial decisions in a matter and, thus, warrants abstention from participation in committee deliberations and voting.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (1980), requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the RFA. 47 Fed. Reg. 18618, 18619 (Apr. 30, 1982). Furthermore, the then Chairman of the Commission previously has certified on behalf of the Commission that comparable rules affecting clearing organizations and registered futures associations did not have a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (Dec. 12, 1986).

This rulemaking will affect individuals who serve on SRO governing boards, disciplinary committees and oversight panels. The Commission believes that this rulemaking will not have a significant economic impact on these SRO committee members. This rulemaking requires these committee members to disclose to their SROs certain information which is known to them at the time that their committees consider certain types of matters. The Commission believes that this requirement will not have any significant economic impact on such members because the information which they are required to provide should be readily available to them.

Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA, 5 U.S.C. § 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities; Proposed Collection; Comment Request

When publishing final rules, the Paperwork Reduction Act of 1995 (''PRA'') (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by PRA. In compliance with the Act, this final rule informs the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit, or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that 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 Office of Management and Budget (''OMB'' control number.

The Commission previously submitted this rule in proposed form and its associated information collection requirements to OMB. OMB approved the collection of information associated with this rule on October 24, 1998, and assigned OMB control number 3038–0022, Rules Pertaining to Contract Markets and their Members, to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response: 788,857.

Number of respondents: 434,052.

Frequency of response: On occasion.

The burden associated with this specific final rule, is as follows:

Average burden hours per response: 2.00.

Number of respondents: 20.

Frequency of response: On occasion.

Persons wishing to comment on the information required by this final rule should contact the Desk Officer, CFTC, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract market.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission hereby amends Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.41 is amended by adding paragraph (f)(10) to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(f) * * *

(10) Governing board members who abstain from voting on a temporary emergency rule pursuant to § 1.69 shall not be counted in determining whether such a rule was approved by the two-

thirds vote required by this regulation. Such members can be counted for the purpose of determining whether a quorum exists.

3. Section 1.63 is amended by revising paragraph (a)(2) to read as follows:

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

(a) * * *

(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.

* * * * *

4. Section 1.69 is added to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

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

(1) *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 in cases involving any violation of the rules of the self-regulatory organization except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.

(2) *Family relationship* of a person means the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) *Governing board* means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a)(12)(A) or 17(j) of the Act to take action or to recommend the taking of action on behalf of the self-regulatory organization.

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

(5) *Member's affiliated firm* is a firm in which the member is a ''principal,'' as defined in § 3.1(a), or an employee.

(6) *Named party in interest* means a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

(7) *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), but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

8 *(Significant action)* includes any of the following types of self-regulatory organization actions or rule changes that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an ''emergency'' as defined in § 1.41(a)(4)(i) through (iv) and (vi) through (viii); and,

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at such self-regulatory organization.

(b) Self-regulatory organization rules. Each self-regulatory organization shall maintain in effect rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to Section 17(j) of the Act, to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Such rules must provide for the following:

(1) Relationship with named party in interest—(i) Nature of relationship. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(A) is a named party in interest;

(B) is an employer, employee, or fellow employee of a named party in interest;

(C) is associated with a named party in interest through a ''broker association'' as defined in § 156.1;

(D) has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing futures or option transactions opposite of each other or to clearing futures or option transactions through the same clearing member; or,

(E) Has a family relationship with a named party in interest.

(ii) Disclosure of relationship. Prior to the consideration of any matter involving a named party in interest, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff whether he or she has one of the relationships listed in paragraph (b)(1)(i) of this section with a named party in interest.

(iii) Procedure for Determination. Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest. Taking into consideration the exigency of the committee action, such determinations should be based upon:

(A) information provided by the member pursuant to paragraph (b)(1)(ii) of this section; and

(B) any other source of information that is held by and reasonably available to the self-regulatory organization.

(2) Financial Interest in a Significant Action—(i) Nature of Interest. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that could reasonably be expected to be affected by the action.

(ii) Disclosure of Interest. Prior to the consideration of any significant action, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff the position information referred to in paragraph (b)(2)(iii) of this section that is known to him or her. This

requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action.

(iii) Procedure for Determination. Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of:

(A) gross positions held at that self-regulatory organization in the member's personal accounts or ''controlled accounts,'' as defined in § 1.3(j);

(B) gross positions held at that self-regulatory organization in proprietary accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(C) gross positions held at that self-regulatory organization in accounts in which the member is a principal, as defined in § 3.1(a);

(D) net positions held at that self-regulatory organization in ''customer'' accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and,

(E) any other types of positions, whether maintained at that self-regulatory organization or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that the self-regulatory organization reasonably expects could be affected by the significant action.

(iv) Bases for Determination. Taking into consideration the exigency of the significant action, such determinations should be based upon:

(A) the most recent large trader reports and clearing records available to the self-regulatory organization;

(B) information provided by the member with respect to positions pursuant to paragraph (b)(2)(ii) of this section; and,

(C) any other source of information that is held by and reasonably available to the self-regulatory organization.

(3) Participation in Deliberations. (i) Under the rules required by this section, a self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain, pursuant to paragraph (b)(2) of this section, if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.

(ii) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the deliberating body shall consider the following factors:

(A) whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(B) whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

(iii) Prior to any determination pursuant to paragraph (b)(3)(i) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action pursuant to paragraph (b)(2) of this section.

(4) Documentation of Determination. Self-regulatory organization governing boards, disciplinary committees, and oversight panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and

(iii) information on the position information that was reviewed for each member.

Issued in Washington, D.C. on December 23, 1998, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–34516 Filed 12–31–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 145 and 147

Commission Records and Information; Open Commission Meetings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') adopts final rules relating to Commission records and information. The rules update and streamline procedures in light of the Commission's experience in the past several years and amend rules regarding open Commission meetings to conform to these modifications.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Donovan, Attorney-Advisor, Office of the Secretariat, (202) 418–5096, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Facsimile: (202) 418–5543. Electronic mail: secretary@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By notice published at 61 FR 66949 on December 19, 1996, the Commission requested comments from the public regarding its proposal to modify its rules relating to Commission records and information. The proposal was based on the Commission's experience since the rules implementing the Freedom of Information Act (''FOIA''), 5 U.S.C. 552 (1997), had been revised October 5, 1989 and the Commission's desire to conform the rules to its practice and the Freedom of Information Reform Act of 1986 (Pub. L. 99–570, §§ 1801–1804). The Commission proposed modifying the terms of Section 145.5(g)(1) to conform to Exemption 7, 5 U.S.C. 552(b)(7), relating to requests for records compiled for law enforcement purposes, modifying the procedures regarding requests for confidential treatment and compilation of Commission records available to the public, increasing the schedule of fees, and changing the rule to reflect current addresses and telephone numbers. In response to its notice, the Commission received only one comment, which was submitted by the New York Mercantile Exchange (''NYMEX''). NYMEX expressed concern regarding one aspect of the proposed revision of 17 CFR 145.9(d)(7) and (e)(1).

Under the current scheme, when there is a FOIA request for materials for which confidential treatment has been sought under Section 145.9 by the submitter of the materials, the Assistant Secretary of the Commission for Freedom of Information, Privacy and Sunshine Acts Compliance, (''Assistant Secretary'') seemingly *must* require the submitter to file a detailed written justification of the confidential treatment request within ten days. However, in some cases the submitter's initial petition for confidential treatment of the information or its response to a prior FOIA request is so complete that the Assistant Secretary does not need supplemental information. The proposed modifications to Sections 145.9(d)(7)