

§ 3.61

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and shall not be used in any manner in the proceeding by any party thereto.

(4) *Acceptance of offer.* The offer of settlement will only be deemed accepted upon issuance by the Commission of an opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Proceedings Clerk.

(5) *Rejection of offer.* When an offer of settlement is rejected, the party making the offer shall be notified by the Division of Enforcement and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding; and the offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(i) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Proceedings Clerk serves the determination on the parties unless:

(1) One or more of the parties files and serves a timely notice of appeal in accordance with § 10.102 of this chapter; or

(2) The Commission issues an order staying the effective date of the determination and notifying the parties of its intention to undertake sua sponte review in accordance with § 10.105 of this chapter.

(j) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

(k) With the exception of §§ 10.2 through 10.5, 10.7 through 10.12(a) (1), 10.12(a) (3) through 10.12(g), 10.26(a)-(d), 10.34, 10.43, 10.44 and 10.84 of this chapter, or unless otherwise provided in §§ 3.50 through 3.64 of this part, the provisions of the Commission's Rules of Practice in part 10 of this chapter shall not apply in any proceeding brought

under this part to deny, suspend, revoke, restrict or condition registration pursuant to sections 8a(2), 8a(3) or 8a(4) of the Commodity Exchange Act.

(1) The failure of any sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market to fulfill its obligations with respect to supervision or monitoring of a conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement shall be deemed a violation of this rule under the Act.

[57 FR 23152, June 2, 1992, as amended at 58 FR 19596, Apr. 15, 1993; 60 FR 54801, Oct. 26, 1995]

§ 3.61 Extensions of time for proceedings brought under § 3.55, § 3.56, and § 3.60 of this part.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission or an Administrative Law Judge before whom a proceeding brought under § 3.55, § 3.56 or § 3.60 is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by those rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or the Administrative Law Judge may set a time limit for that action.

(b) *Motions for extension of time.* Absent extraordinary circumstances, in any instance in which a time limit that has been prescribed for an action to be taken concerning any matter exceeds seven days from the date of the order establishing the time limit, requests for extension of time shall be filed at least five (5) days prior to the expiration of the time limit and shall explain why an extension of time is necessary.

[57 FR 23154, June 2, 1992, as amended at 58 FR 19597, Apr. 15, 1993]

§ 3.62 [Reserved]

§ 3.63 Service of order issued by an Administrative Law Judge or the Commission.

A copy of any order issued pursuant to § 3.60 of this part shall be served

promptly upon the applicant or registrant, the Division of Clearing and Intermediary Oversight, the Division of Enforcement, the National Futures Association, and any contract markets where the applicant or registrant is a member or has trading privileges in accordance with the provisions of § 3.50(a) of this part.

[57 FR 23154, June 2, 1992, as amended at 67 FR 62351, Oct. 7, 2002]

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) *Petition.* The registrant and his sponsor or supervising floor broker may file a petition with the Proceedings Clerk and serve a copy of the petition on the Division of Enforcement to lift or modify conditions or restrictions on the registrant's registration.

(1) The petition may be filed after the period specified in the order imposing the conditioned or restricted registration.

(2) In the petition, the registrant and his sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. The affidavit must be sworn to by a person with actual knowledge of the registrant's activities on behalf of the sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market.

(b) *Response.* (1) Within thirty days of receipt of the petition, pursuant to paragraph (a) of this section, the Division of Enforcement shall file a response with the Proceedings Clerk. The response must include a recommendation by the Division of Enforcement as to whether to continue the conditions or restrictions, modify the conditions or restrictions, or to allow for a full registration.

(2) If the Division of Enforcement agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Commission. Such recommendation will only be

deemed accepted upon issuance by the Commission of an order lifting or modifying conditions or restrictions on the petitioner's registration. Such order shall be so noted on the docket by the Proceedings Clerk.

(c) *Oral presentation.* If the Division of Enforcement requests a continuation, or a modification other than in accordance with the terms of the petition, of the restrictions or conditions on the registration, the Administrative Law Judge shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this section, determine whether an oral presentation is appropriate to the reliable resolution of the registrant's petition.

(1) If the Administrative Law Judge determines that an oral presentation is appropriate, he shall notify the parties of his determination and shall schedule and conduct an oral hearing in accordance with §§ 10.61 through 10.81 of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision or an order.

(2) If the Administrative Law Judge concludes that an oral presentation is unnecessary, he shall notify the parties and issue a written decision or an order.

(d) *Effect of the Administrative Law Judge's determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Proceedings Clerk serves the determination on the registrant, the registrant's sponsor, supervising employer or floor broker, or supervising registrant, principal or contract market, and the Division of Enforcement unless one or more of the parties files a timely notice of appeal in accordance with § 10.102 of this chapter.

(e) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

[57 FR 23154, June 2, 1992, as amended at 58 FR 19597, Apr. 15, 1993; 60 FR 54801, Oct. 26, 1995]