

§ 171.45

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.45 General procedures.

The following procedural rules applicable to review of decisions of the National Futures Association in disciplinary, membership denial and registration actions shall also apply to the review of decisions of the National Futures Association in member responsibility actions:

- (a) Section 171.24 Submission of the Record.
- (b) Section 171.25 Appeal Brief.
- (c) Section 171.26 Answering Brief.
- (d) Section 171.27 Limited Participation By Interested Persons.
- (e) Section 171.28 Participation By Commission Staff.
- (f) Section 171.30 Scope of Review.
- (g) Section 171.31 Commission Review In the Absence of An Appeal.
- (h) Section 171.32 Oral Argument.
- (i) Section 171.33 Final Decision By the Commission.

§ 171.46 Standards of review.

In reviewing the decision of the National Futures Association in a member responsibility action, the Commission shall consider whether:

- (a) The proceedings were conducted in a manner consistent with fundamental fairness;
- (b) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;
- (c) The weight of the evidence supports the findings of the National Futures Association concerning the reasons for the action;
- (d) The determination that summary action is necessary to protect the commodity futures markets, customers, or members of the National Futures Association rests on a reasonable interpretation of the NFA rules at issue;
- (e) The National Futures Association's application of its rules is consistent with the purposes of the Act;
- (f) In light of the findings of the National Futures Association concerning the reasons for the action and the public interest, the suspension, restriction

17 CFR Ch. I (4-1-03 Edition)

or remedial action imposed by the National Futures Association is not excessive, oppressive or an abuse of discretion.

Subpart E—Delegation of Functions

§ 171.50 Delegation to the General Counsel.

(a) The Commission hereby delegates, until it orders otherwise, to the General Counsel or the General Counsel's designee, the authority:

- (1) To waive or modify any of the requirements of §§ 171.25, 171.26, 171.27 and to waive or modify any requirement of the part 171 Rules insofar as it pertains to changes in the time permitted for filing, or the form, execution, service and filing of documents;
 - (2) To enter orders under §§ 171.10, 171.12, 171.21 and 171.31(c);
 - (3) To decline to accept any notice of appeal, or petition for stay pending review, of matters specified in § 171.1(b) and to so notify the appellant and the registered futures association;
 - (4) To stay the effective date of a decision of the National Futures Association in a disciplinary, membership denial or registration action, or a decision relating to such actions issued by the Commission pursuant to these rules, for a reasonable period of time, not to exceed 10 days, when such a stay is necessary to allow the Commission to consider a petition to stay the effective date of such a decision or a motion for similar relief;
 - (5) To decline to accept any document which has not been filed or perfected as specified in these rules;
 - (6) To determine motions seeking permission to participate in a proceeding under § 171.27 and to establish the related briefing schedule;
 - (7) To establish briefing schedules under § 171.28; and
 - (8) To enter any order which, in his judgment, will facilitate or expedite Commission review of a decision by the National Futures Association in a disciplinary, membership denial or registration action.
- (b) Within seven days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition

Commodity Futures Trading Commission

§ 190.01

for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(c) The General Counsel or the General Counsel's designee may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the General Counsel under this section.

[55 FR 41068, Oct. 9, 1990, as amended at 64 FR 46271, Aug. 25, 1999]

PART 190—BANKRUPTCY

Sec.

190.01 Definitions.

190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.

190.03 Operation of the debtor's estate subsequent to the primary liquidation date.

190.04 Operation of the debtor's estate—general.

190.05 Making and taking delivery on commodity contracts.

190.06 Transfers.

190.07 Calculation of allowed net equity.

190.08 Allocation of property and allowance of claims.

190.09 Member property.

190.10 General.

APPENDIX A TO PART 190—BANKRUPTCY FORMS

APPENDIX B TO PART 190—SPECIAL BANKRUPTCY DISTRIBUTIONS

AUTHORITY: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761-766, unless otherwise noted.

SOURCE: 48 FR 8739, Mar. 1, 1983, unless otherwise noted.

§ 190.01 Definitions.

For purposes of this part:

(a) *Account class* means each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: futures accounts, foreign futures accounts, leverage accounts, commodity option accounts and delivery accounts as defined in § 190.05(a)(2): *Provided, however*, That to the extent that the equity balance, as defined in § 190.07, of a customer in a

commodity option, as defined in § 1.3(hh) of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account.

(b) *Allowed net equity* means the amount calculated as allowed net equity in accordance with § 190.07(a).

(c) *Bankruptcy Code* means, except as the context of the regulations in this part otherwise requires, those provisions of the Bankruptcy Reform Act of 1978, as amended from time to time, relating to ordinary bankruptcies (chapters 1 through 5) and to liquidations (chapter 7 with the exception of subchapter III), together with the Federal rules of bankruptcy procedure relating thereto.

(d) *Business day* means weekdays, not including Federal holidays.

(e) *Clearing organization* shall have the same meaning as that set forth in section 761(2) of the Bankruptcy Code and shall include any organization which clears commodity options which are traded on or subject to the rules of a contract market or a board of trade.

(f) *Commodity broker* means any person who is registered or required to register as a futures commission merchant under the Commodity Exchange Act including a person registered or required to be registered as such under Parts 32 and 33 of this chapter, and a "commodity options dealer," "foreign futures commission merchant," "clearing organization," and "leverage transaction merchant" with respect to which there is a "customer" as those terms are defined in this section, but excluding a person registered as a futures commission merchant under section 4f(a)(2) of the Commodity Exchange Act.

(g) *Commodity contract* shall have the same meaning, subject to paragraph (nn) of this section, as that set forth in section 761(4) of the Bankruptcy Code.

(h) *Commodity options dealer* shall have the same meaning as that set forth in section 761(6) of the Bankruptcy Code.