

COMMODITY FUTURES TRADING COMMISSION

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

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is updating the delegation it issued in 1999 to the National Futures Association (“NFA”) regarding the duty to receive and to process exchange disciplinary and access denial action information. The delegation is being updated to clarify, among other things, that designated contract market (“DCM”) and swap execution facility (“SEF”) disciplinary and access denial notices must be filed with the NFA instead of the Commission. The NFA will continue to serve as the official custodian of records for exchange disciplinary filings.

DATES: This Notice and Order takes effect on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Deputy Director, 202-418-5429 or rberdansky@cftc.gov; David Steinberg, Associate Director, 202-418-5102 or dsteinberg@cftc.gov; Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a separate document published elsewhere in this issue of the *Federal Register*, the Commission issued final rules that update its part 9 rules (“Final Part 9 Rules”), including regulation 9.11, that sets forth the notice requirements for an exchange regarding disciplinary and access denial actions. Commission regulation 9.11 was first established in 1978 to carry out certain mandates of section 8c of the Commodity Exchange Act (“Act” or “CEA”).¹ Section 8c of the Act generally: (i) requires exchanges to discipline members and to notify the disciplined individuals, the Commission, and the public of disciplinary actions; and (ii) grants the Commission the authority to review exchange disciplinary actions. Commission regulation 9.11 sets forth the manner in which an exchange is to provide that notice.

In 1999, the Commission delegated authority to the NFA to receive and to process exchange disciplinary and access denial information (“Part 9 Delegation”).² Consequently, the NFA currently serves as the official custodian of records for exchange disciplinary filings. In 1999, concurrent with the Part 9 Delegation, the Commission published an advisory permitting exchanges to file 9.11 notices with the Commission or the NFA (“Part 9 Advisory”).³ While permitting filing with the Commission, the Part 9 Advisory encourages exchanges to file the required notice with the NFA. The Final Part 9 Rules, among other things, codify the Part 9 Advisory and replace the regulation 9.11 requirement that written notice be provided to the Commission with a requirement that notice be provided to the NFA via the NFA’s Background Affiliation Status Information

¹ 43 FR 59343 (Dec. 20, 1978).

² 64 FR 39913 (July 23, 1999).

³ *Id.* at 39915.

Center (“BASIC”) system.⁴ Moreover, because SEFs did not exist when the Commission issued the initial delegation in 1999, this Notice and Order is being updated to reflect that the NFA will receive disciplinary and access denial action notices from SEFs in addition to DCMs.⁵ For purposes of this Notice and Order, the term “exchange” includes DCMs and SEFs.

II. Delegation of Duties to the NFA

A. Processing Regulation 9.11 Filings

The NFA must process exchange regulation 9.11 notices in a manner consistent with regulation 9.11. For purposes of this Notice and Order, the term “process” generally refers to receipt of filings and review of filings for compliance with applicable requirements. Regulation 9.11(a) requires that whenever an exchange decision, pursuant to which a disciplinary or access denial action to be imposed has become final, the exchange must provide written notice of such action to the NFA within 30 days. In addition, regulation 9.11 notices filed with the NFA must satisfy all of the content requirements set forth in regulation 9.11(b). Toward that end, notices filed with the NFA will be deemed certified when an authorized exchange employee verifies the accuracy of the information entered into BASIC.

B. Commission Access to BASIC and Reports

The NFA must provide the Commission with access to the BASIC system so that the Commission can diligently carry out its legislative mandate. This includes access to a

⁴ The NFA’s BASIC system allows the public to access disciplinary information contributed by the NFA, CFTC, DCMs, and SEFs pertaining to the types of violations committed, penalties imposed, the effective date of the action, and summary of the disciplinary action. The BASIC system enables the public to conduct a search by NFA identification number, individual name, or firm name.

⁵ The Final Part 9 Rules amend the definition of “exchange” in regulation 9.2 to include SEFs in addition to DCMs.

Management Report that includes the following for each disciplinary or access denial action:

- Name of Contributor (*i.e.*, an exchange, the NFA, or the Commission);
- Name of Respondent;
- Contributor Reference Number (*i.e.*, disciplinary case number generated by contributor);

- Date of Decision or Order;
- Date of Notification of NFA;
- Total Number of Days for Data to be Released into BASIC (*i.e.*, number of days from the date of an exchange final action until the date of exchange verification/certification); and

- Name of Staff Person Entering Data (*i.e.*, initials).

The Commission currently has access to the BASIC system and the ability to generate 26 standardized reports that are customizable with respect to the timeframe selected (*e.g.*, January 1, 2017 to May 31, 2017), including the Management Report. Among other things, the Commission is able to analyze the data maintained in BASIC by: disciplinary actions against firms or individuals resulting in fines, suspensions, or expulsions; disciplinary actions issued by each exchange; and the type of rule violations across all exchanges. The Commission generates these reports on an as needed basis. As the Commission needs these reports for effective oversight of the exchanges, the NFA must continue to provide the Commission with the capability to generate each of these reports from BASIC. The NFA shall continue working with the Commission to develop

additional query capabilities as the Commission deems necessary to fulfill its regulatory and oversight responsibilities.

C. BASIC Maintenance

The NFA shall maintain, and serve as the official custodian of, records for exchange regulation 9.11 filings. The NFA shall fulfill this obligation by continuing to maintain the BASIC system and further developing it as necessary to comply with the terms of this Notice and Order. The NFA shall also implement such additional procedures (or modify existing procedures) as are necessary to reasonably ensure the security and integrity of these records.

III. Authority

Pursuant to section 8a(10) of the Act, the Commission has issued numerous orders authorizing the NFA to perform various portions of the Commission's registration functions and responsibilities under the Act.⁶ In this connection, the Commission has previously issued orders authorizing the NFA to perform the full range of registration processing functions with respect to applicants for and persons registered as a: futures commission merchant, commodity pool operator, or commodity trading advisor;⁷ introducing broker;⁸ leverage transaction merchant;⁹ floor broker;¹⁰ floor trader;¹¹ retail

⁶ 7 U.S.C. 12a(10) (2014). Further, CEA section 17(o) provides that the Commission may require a registered futures association ("RFA") to perform Commission registration functions in accordance with the Act and the RFA's rules. 7 U.S.C. 21(o) (2014).

⁷ See 49 FR 39593 (Oct. 9, 1984).

⁸ See 48 FR 35158 (Aug. 3, 1983).

⁹ See 54 FR 19556 (May 8, 1989).

¹⁰ See 51 FR 34490 (Sep. 29, 1986).

¹¹ See 58 FR 19657 (Apr. 15, 1993).

foreign exchange dealer;¹² and swap dealer or major swap participant (collectively, registrants).¹³ Additionally, the NFA has adopted, and the Commission has approved, rules that govern the performance of the registration functions. For example, NFA Rule 501 pertains to the NFA's authority to deny, condition, suspend, and revoke registration for registrants. NFA Rule 504 sets forth the procedures governing applicants and registrants disqualified from registration under sections 8a(2), 8a(3), or 8a(4) of the Act.

In light of NFA's experience in processing and maintaining exchange disciplinary and access denial actions on behalf of the Commission, the Commission has determined that it will continue to delegate these functions to the NFA. This Notice and Order is in accord with the Commission's previous delegations to the NFA to perform registration processing functions with respect to applicants and registrants, in that, an individual's or firm's disciplinary history clearly is a factor that must be considered in any fitness determination. Deeming the NFA as the custodian of all exchange regulation 9.11 filings, and delegating to the NFA the responsibility for processing such filings and generating reports with the information amassed, should ensure that the NFA has the necessary information to continue to make appropriate registration determinations. Further, the Commission believes that this delegation order will enhance efficiency by permitting the Commission to carry out its statutory responsibilities under the CEA, while also freeing up Commission resources to be directed to other parts of its regulatory mandate.

¹² See 75 FR 55310 (Sep. 10, 2010).

¹³ See 77 FR 2708 (Jan. 19, 2012).

IV. Conclusion and Order

The Commission has determined, in accordance with section 8a(10) of the Act, to delegate to the NFA the authority to perform the following functions:

- (1) To process exchange disciplinary information filed with it by an exchange or the Commission for inclusion in the BASIC system;
- (2) To provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information and to provide the Commission with the capability to generate standardized reports on the BASIC system;
- (3) To assist the Commission in enforcing exchange compliance with regulation 9.11 filing requirements; and
- (4) To serve as the official custodian of a database containing records of all exchange disciplinary and access denial actions filed with the NFA for inclusion in the BASIC system.

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

Commission staff will be available to discuss with NFA staff issues relating to implementation of this Notice and Order.

Issued in Washington, DC, on January 9, 2018, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

**Appendix to Performance of Certain Functions by the National Futures Association
with Respect to Regulation 9.11 – Commission Voting Summary**

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.