

**§ 9.12 Effective date of disciplinary or access denial action.**

(a) *Effective date.* Any disciplinary or access denial action taken by an exchange will not become effective until at least fifteen days after the written notice prescribed by § 9.11 is delivered to the person disciplined or denied access; *Provided, however,* That the exchange may cause a disciplinary action to become effective prior to that time if:

(1) As permitted by part 37, appendix B, Core Principle 2, paragraph (a)(14) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(7) of this chapter (emergency disciplinary actions), the exchange reasonably believes, and so states in its written decision, that immediate action is necessary to protect the best interests of the marketplace; or

(2) As permitted by part 37, appendix B, Core Principle 2, paragraph (a)(10)(vi) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(4) of this chapter (hearings), the exchange determines, and so states in its written decision, that the actions of a person who is within the exchange's jurisdiction has impeded the progress of a disciplinary hearing; or

(3) As permitted by part 37, appendix B, Core Principle 2, paragraph (a)(13) of this chapter (summary fines for violations of rules regarding timely submission of records) or part 38, appendix B, Core Principle 13, paragraph (a)(6) of this chapter (summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities), the exchange determines that a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; or

(4) The person against whom the action is taken has consented to the penalty to be imposed and to the timing of its effectiveness.

(b) *Notice of early effective date.* If the exchange determines in accordance with paragraph (a)(1) of this section that a disciplinary action will become effective prior to the expiration of fifteen days after written notice thereof, it must notify the person disciplined in writing, either personally or by email to the person's last known email address, stating the reasons for the determination. The exchange must also immediately notify the Commission by email to *secretary@cftc.gov*. Where notice is delivered by email, the time within which the person so notified may file a petition for stay pursuant to

§ 9.24(a)(2) will be increased by one day.

■ 13. Revise § 9.13 to read as follows:

**§ 9.13 Publication of notice.**

Whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(b). An exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of § 9.12 by posting a notice on its website to which its members and the public regularly have access. Such notice must be maintained and readily available on the exchange's website.

■ 14. In § 9.24, revise paragraph (a)(2) to read as follows:

**§ 9.24 Petition for stay pending review.**

(a) \* \* \*

(2) Within ten days after a notice of summary action has been delivered in accordance with § 9.12(b) to a person who is the subject of a summary action permitted by part 37, appendix B, Core Principle 2, paragraph (a)(14) of this chapter or part 38, appendix B, Core Principle 13, paragraph (a)(7) of this chapter (emergency disciplinary actions), that person may petition the Commission to stay the effectiveness of the summary action pending completion of the exchange proceeding.

\* \* \* \* \*

■ 15. Revise § 9.31 to read as follows:

**§ 9.31 Commission review of disciplinary or access denial action on its own motion.**

(a) *Request for additional information.* Where a person disciplined or denied access has not appealed the exchange decision to the Commission, upon review of the notice specified in § 9.11, the Division of Market Oversight or the Division of Swap Dealer and Intermediary Oversight may request that the exchange file with the Division the record of the exchange proceeding, or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular exchange proceeding as the Division may specify. The exchange must promptly advise the person who is the subject of the disciplinary or access denial action of the Division's request. Within thirty days after service of the Division's request, the exchange must file the information requested with the

Division in the manner requested by the Division and, upon request, deliver that information to the person who is the subject of the disciplinary or access denial action. Delivery to the person who is the subject of the disciplinary or access denial action must be in the manner prescribed by § 9.11(c). A person subject to the disciplinary action or access denial action requesting a copy of the information furnished to the Division must, if the exchange rules so provide, agree to pay the exchange reasonable fees for printing the copy.

(b) *Review on motion of the Commission.* The Commission may institute review of an exchange disciplinary or access denial action on its own motion. Other than in extraordinary circumstances, such review will be initiated within 180 days after the NFA has received the notice of exchange action provided for in § 9.11. If the Commission should institute review on its own motion, it will issue an order permitting the person who is the subject of the disciplinary or access denial action an opportunity to file an appropriate submission, and the exchange an opportunity to file a reply thereto.

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

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Technical Amendments to Rules on Registration and Review of Exchange Disciplinary, Access Denial or Other Adverse Actions—Commission Voting Summary**

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

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**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 9**

**Performance of Certain Functions by the National Futures Association With Respect to the Receipt and Processing of Exchange Disciplinary and Access Denial Action Information**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice and order; delegation of authority.

**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 March 13, 2018.

**FOR FURTHER INFORMATION CONTACT:** Rachel Berdansky, Deputy Director, 202-418-5429 or [rberdansky@cftc.gov](mailto:rberdansky@cftc.gov); David Steinberg, Associate Director, 202-418-5102 or [dsteinberg@cftc.gov](mailto: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 17 CFR part 9 rules (“Final Part 9 Rules”), including § 9.11, that sets forth the notice requirements for an exchange regarding disciplinary and access denial actions. Section 9.11 was first established in 1978 to carry out certain mandates of section 8c of the Commodity Exchange Act (“Act” or “CEA”).<sup>1</sup> 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. Section 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”).<sup>2</sup> 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”).<sup>3</sup> 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 § 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 Center (“BASIC”) system.<sup>4</sup> 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.<sup>5</sup> 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 § 9.11 notices in a manner consistent with § 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. Section 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, § 9.11 notices filed with the NFA must satisfy all of the content requirements set forth in § 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 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;

<sup>4</sup> 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.

<sup>5</sup> The Final Part 9 Rules amend the definition of “exchange” in § 9.2 to include SEFs in addition to DCMs.

- 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 § 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.<sup>6</sup> In this connection, the Commission has previously issued orders authorizing the

<sup>6</sup> 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).

<sup>1</sup> 43 FR 59343 (Dec. 20, 1978).

<sup>2</sup> 64 FR 39913 (July 23, 1999).

<sup>3</sup> *Id.* at 39915.

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;<sup>7</sup> introducing broker;<sup>8</sup> leverage transaction merchant;<sup>9</sup> floor broker;<sup>10</sup> floor trader;<sup>11</sup> retail foreign exchange dealer;<sup>12</sup> and swap dealer or major swap participant (collectively, registrants).<sup>13</sup> 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 § 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.

#### 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 § 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.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 250 and 385

[Docket No. RM18-4-000; Order No. 839]

#### Civil Monetary Penalty Inflation Adjustments

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing a final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this final rule.

**DATES:** This final rule is effective January 12, 2018.

**FOR FURTHER INFORMATION CONTACT:** Todd Hettenbach, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8794 [Todd.Hettenbach@ferc.gov](mailto:Todd.Hettenbach@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Order No. 839

##### Final Rule

1. In this final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

##### Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),<sup>1</sup> which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),<sup>2</sup> required the head of each federal agency to issue a rule by July 2016 adjusting for inflation each "civil monetary penalty" provided by law within the agency's jurisdiction and to make further inflation adjustments on an annual basis every January 15 thereafter.<sup>3</sup>

##### II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) Is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law; (B) is assessed or enforced by an agency pursuant to federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.<sup>4</sup> This

<sup>1</sup> Sec. 701, Public Law 114-74, 129 Stat. 584, 599.

<sup>2</sup> Public Law 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

<sup>3</sup> 28 U.S.C. 2461 note, at (4). The Commission made its January 2017 adjustment on January 9, 2017, in Docket No. RM17-9-000. See *Civil Monetary Penalty Inflation Adjustments*, Order No. 834, 82 FR 8137 (Jan. 24, 2017), FERC Stats. & Regs. ¶ 31,390 (2017).

<sup>4</sup> *Id.* (3).

<sup>7</sup> See 49 FR 39593 (Oct. 9, 1984).

<sup>8</sup> See 48 FR 35158 (Aug. 3, 1983).

<sup>9</sup> See 54 FR 19556 (May 8, 1989).

<sup>10</sup> See 51 FR 34490 (Sep. 29, 1986).

<sup>11</sup> See 58 FR 19657 (Apr. 15, 1993).

<sup>12</sup> See 75 FR 55310 (Sep. 10, 2010).

<sup>13</sup> See 77 FR 2708 (Jan. 19, 2012).