Eagle Pass, El Paso, Hidalgo, Laredo, and Presidio, Texas.

(d) *Limited ports.* The following limited ports are designated as having inspection facilities for the entry of animal semen: Anchorage and Fairbanks, Alaska; San Diego, California; Denver, Colorado; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; International Falls and Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; Galveston and Houston, Texas; Seattle, Spokane, and Tacoma, Washington.

* * * * *

§ 98.34 [Amended]

4. In § 98.34, paragraph (a)(1), the designations "§§ 98.26, 98.27, and 98.28," are removed and the designation "§ 98.36," is added in their place.

§ 98.35 [Amended]

5. In § 98.35, paragraph (a), the words "this part" are removed and the words "this subpart" are added in their place.

6. In § 98.35, the section heading is revised and paragraphs, (c) and (d), are added to read as follows:

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(c) All animal semen offered for importation into the United States shall be accompanied by a health certificate issued by:

(1) A full-time salaried veterinarian of the national government of the country of origin; or

(2) Any veterinarian authorized by the national government of the country of origin, provided that the health certificate is endorsed by a full-time salaried veterinarian of the national government of the country of origin.

(d) The health certificate must state:

(1) The name and address of the place where the semen was collected;

(2) The name and address of the veterinarian who supervised the collection of the semen;

(3) The date of semen collection;

(4) The identification and breed of the donor animal;

(5) The number of ampules or straws covered by the health certificate and the identification number or code on each ampule or straw;

(6) The dates, types, and results of all examinations and tests performed on the donor animal as a condition for importing the semen;

(7) The names and addresses of the consignor and consignee; and

(8) That the semen is being imported into the United States in accordance with subpart C of 9 CFR part 98.

7. Section 98.36, including the undesignated center-heading "CANADA [3]", is revised, and footnote 3 removed, to read as follows:

Canada

§ 98.36 Import permit, declaration, and health certificate for animal semen.

(a) For animal semen intended for importation from Canada, the importer shall first apply for and obtain from APHIS an import permit as provided in § 98.34: *Provided*, that an import permit is not required for animal semen offered for entry at a land border port designated in § 98.33(b) if the donor animal:

(1) Was born in Canada or the United States, and has been in no country other than Canada or the United States; or

(2) has been legally imported into Canada from some other country and unconditionally released in Canada so as to be eligible to move freely within that country without restriction of any kind and has been in Canada after such release for 60 days or longer.

(b) For all animal semen offered for importation from Canada, the importer or his or her agent shall present two copies of a declaration and a copy of a health certificate as provided in § 98.35.

§§ 98.37 through 98.39 [Removed]

8. The undesignated center-headings "Countries of Central America and West Indies [4]" and "Mexico [5]", §§ 98.37 through 98.39, and footnotes 4 and 5 are removed.

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16538 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted a rulemaking which implements the statutory directives of sections 5a, 8c and 17 of the Commodity Exchange Act ("Act") as they were amended by section 206 of the Futures Trading Practices Act of 1992 ("1992 Act"). This rulemaking establishes various requirements with respect to the composition of self-regulatory organization ("SRO") governing boards and major disciplinary committees. In general, section 206 requires a greater diversity of representation of SRO governing boards and disciplinary committees in order to promote the public interest in the self-regulatory process.

DATES: The following are the effective dates of this rulemaking's various provisions: the amendment to § 1.41(d) is effective July 13, 1993; the amendment to § 1.63 is effective August 12, 1993; § 1.64 is effective July 13, 1993; and, § 1.67 is effective August 12, 1993.

SRO rules complying with § 1.64 must have been submitted to and allowed to become effective by the Commission by October 12, 1993. Each SRO must comply with § 1.64(a), (b)(1), (c) and (d) immediately upon the Commission allowing the SRO's implementing rules to become effective. Each SRO must comply with § 1.64(b)(2) and (c) as of the date of its next governing board election.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 12, 1993, the Commission published for public comment in the **Federal Register** a proposed new Regulation 1.64 and proposed amendments to existing § 1.63.[1] The new regulation and regulation amendments were proposed in response to the statutory directives set forth in section 206 of the 1992 Act.[2] Section 206 of the 1992 Act amended the Act to require that the Commission establish various standards with respect to the composition of SRO governing boards and major disciplinary committees. Previously, the Act had not directly imposed any standards for service on such SRO deliberative bodies.[3]

[1] 58 FR 13565 (March 12, 1993).

[2] Pub. L. 102–546, section 206, 106 Stat. 3590 (1992).

[3] Commission Regulation 1.63, which imposes service standards for SRO governing boards, disciplinary committees and arbitration panels, was

The Commission received eleven written comments in response to the proposed rulemaking. The commenters included seven contract markets (Chicago Board of Trade ("CBT"), Chicago Mercantile Exchange ("CME"), Coffee Sugar & Cocoa Exchange, Inc. ("CSC"), Commodity Exchange, Inc. ("COMEX"), New York Cotton Exchange, Inc. ("NYCE"), New York Futures Exchange, Inc. ("NYFE") and New York Mercantile Exchange ("NYMEX"), a registered futures association (National Futures Association ("NFA")), a clearing organization (Board of Trade Clearing Corporation ("BOTCC")), a commodity industry trade association (Managed Futures Association ("MFA")) and a company which has a commercial interest in a commodity underlying a futures contract (Sunkist). The comments received on particular aspects of the proposed rulemaking are discussed below in the context of the specific rule provision to which they pertain. The Commission has carefully reviewed each of these comments and, based upon that review and its reconsideration of the proposed rulemaking, is now adopting rules which it believes are responsive to the concerns raised by commenters and the statutory objectives of this rulemaking.

II. Description of Proposed Rulemaking

A. Composition Requirements

1. Definition of SRO

a. *Proposed regulation.* In compliance with section 206 of the 1992 Act, the Commission proposed a new Commission § 1.64 which would impose various composition requirements on SRO governing boards and major disciplinary committees. In proposing § 1.64, the Commission pointed out that section 206(a) amended section 5a of the Act to establish composition requirements for the governing board of each "contract market's board of trade" and for the major disciplinary committees of each "contract market."[4] The Commission interpreted section 206(a) to mandate composition requirements for each futures exchange (*i.e.*, board of trade) but not for clearing organizations.

Although the Commission proposed that § 1.64's composition requirements be limited to the governing boards and major disciplinary committees of exchanges and registered futures associations, it also invited comment as to whether any or all of the requirements of proposed § 1.64 should apply to the governing boards and major disciplinary committees of clearing organizations.

b. *Comments received.* The BOTCC and CSC both commented that clearing organizations should not be considered SROs for the purposes of § 1.64 and that, accordingly, § 1.64's composition requirements should not apply to clearing organization governing boards and major disciplinary committees. The BOTCC particularly noted that "neither section 206 nor the legislative history of the 1992 Act suggests in any respect that Congress intended rules implementing the provisions of section 206 to apply to clearing organizations."

The Commission also received comments from the CME and NYMEX that clearing organizations which are divisions of futures exchanges (*e.g.*, CME and NYMEX Clearing Houses) rather than separate legal entities (*e.g.*, BOTCC) should not be included within the definition of SRO for purposes of § 1.64. NYMEX, for instance, contends that its Clearing House functions exactly as a separately-incorporated clearing organization does for other futures exchanges and that, accordingly, both separately-incorporated and integrated clearing organizations should be outside the scope of § 1.64.

c. *Regulation 1.64(a)(1).* The Commission has considered these comments and the pertinent aspects of section 206 and its legislative history and has determined to not include clearing organizations within § 1.64(a)(1)'s definition of SRO. The Commission notes that Section 206 does not explicitly apply to clearing organizations, and neither did the House and Senate bills which were the predecessors to the 1992 Act (H.R. 707, 102d Cong., 1st Sess. (1991) and S. 207, 102d Cong., 1st Sess. (1991)). The Senate bill's legislative history, in fact, indicates that a nearly identical provision in the Senate bill was not to be imposed on clearing organizations but that "contract markets should consider applying the principles of [the provision] to their clearinghouses and other bodies in appropriate cases to engender public confidence in the integrity and openness of exchange decisionmaking." S. Rep. No. 102–22, 102d Cong., 1st Sess., 38 (1991).

The Commission also concurs with the comments of the CME and NYMEX and will not extend the requirements of § 1.64 to those clearing organizations which are divisions of futures exchanges rather than separate legal entities. The Commission believes that this approach is consistent with Congress' intent to excuse clearing organization decisionmaking bodies from the standards of section 206 of the 1992 Act. This approach would not affect the governing board composition requirements of § 1.64 which fully apply to each futures exchange governing board regardless of whether the exchange does or does not have a clearing organization division. The only bodies which are affected are major disciplinary committees which deal with clearing organization disciplinary matters at exchanges with a clearing organization division.

The Commission expects that the only SRO major disciplinary committees which would not be subject to § 1.64's composition requirements are those committees at futures exchanges with clearing organization divisions which deal with violations of clearing organization rules. At the present time, there are three futures exchanges which use clearing organization divisions rather than a separately incorporated clearing organization—the CME, Minneapolis Grain Exchange ("MGE") and NYMEX. Based upon their present rulebooks, disciplinary committees at the CME, MGE and NYMEX are excused from § 1.64(c)'s composition requirements whenever they deal with disciplinary matters concerning CME's Chapter 9 rules, MGE's Chapter 21 rules and NYMEX's Chapter 9 rules, respectively. These rules principally address margin, reporting and various financial requirements for clearing members. If a disciplinary committee at one of these exchanges has jurisdiction over both clearing organization and non-clearing organization rule violations, the committee must comply with Regulation 1.64(c) when considering the non-clearing organization matter.[5]

2. Governing Board Diversity Standards

a. *Proposed regulation.* As originally proposed, Commission Regulation 1.64(b)(1) required each SRO to implement rules requiring that its governing board be comprised of persons from a variety of membership interests who would meaningfully represent the diverse interests of the SRO's members. In describing proposed § 1.64(b)(1) the Commission stated that each SRO should establish, by rule, some fixed form of categorical representation which would ensure that the various interests which could be

promulgated by the Commission pursuant to the general rulemaking authority of section 8a(5) of the Act. See 55 FR 7884 (March 5, 1990).

[4] Section 206(b) similarly amended section 17 of the Act to establish composition requirements for the governing board and major disciplinary committees of each registered futures association.

[5] This assumes that the disciplinary committee otherwise is within § 1.64(a)(2)'s definition of a major disciplinary committee. See Section II.A.5., below, for a discussion of this definition.

affected by the decisionmaking of an SRO governing board would be fairly represented on the board.

b. *Comments received.* The CBT commented that the Commission in adopting Regulation 1.64(b)(1) should clarify that complying SROs would not be required to establish a quota system for representation on their governing boards. In addition, the CME contended that the diversity standards in the 1992 Act were sufficiently clear so that it was not necessary for the Commission to act in this regard.

c. *Section 1.64(b)(3).*[6] Final § 1.64(b)(3) has been revised to state that SROs must establish their diversity standards pursuant to standards and procedures.[7] Regulation 1.64(b) requires that such SRO standards and procedures for meeting the composition requirements of section 206 of the 1992 Act must ensure that the governing board will fairly represent the diversity of membership interest at such SRO.[8] The Commission stresses that § 1.64(b)(3) does not necessarily require that each SRO's standards and procedures establish either a quota system or proportional representation for the different types of membership interests which must be represented on its governing board. However, such standards and procedures must provide for some representation of each enumerated membership interest and describe the manner in which the SRO's diversity of membership interests will be meaningfully represented on the board. The Commission believes that the application of § 1.64(b)(3) will provide each SRO with sufficient flexibility to structure its governing board so that it is reflective of all of its members. In particular, each SRO must take into account the premise of section 206 of the 1992 Act that non-floor interests have a role in the governing and regulatory process at the SRO.

The Commission seeks to clarify that this and all of § 1.64's composition requirements for SRO governing boards are intended to apply to the composition of a full SRO governing board and not to the composition at any one board meeting. Accordingly, SROs are not required to reconstitute their boards each time they meet because certain board members are absent, provided that all board members are properly notified of each board meeting.

Although section 206 of the 1992 Act did not specifically require that the Commission adopt an implementing regulation with respect to diversity standards for SRO governing boards, the Commission believes that such a regulation is necessary. For instance, section 206 only provides a list of what membership interests shall be represented on a contract market board and does not specify at all the types of membership interests which should be represented on registered futures association boards. Both of these issues are addressed in final § 1.64. In addition, § 1.64(b)(3) as adopted ensures that the Commission will be able to review each SRO's implementing standards and procedures and thus enhance the Commission's ability to enforce the requirements of section 206.

3. Governing Board Non-Member Representatives

a. *Proposed regulation.* As proposed by the Commission, § 1.64(b)(2) required each SRO to adopt a rule requiring that at least 20% of the members of its governing board be non-member representatives who are capable of contributing to the board's deliberations consistent with section 206 of the 1992 Act. Proposed § 1.64(b)(2) established a two-part test for who could qualify as such a representative. First, the person would generally have to be knowledgeable of futures trading or financial regulation. Second, the person could not have certain commodity industry affiliations. Proposed § 1.64(b)(2)(ii) specified that the non-member representative must not have been a Commission registrant or SRO member within the prior year. In addition, the non-member representative must not have received more than ten percent of his income for the prior year as compensation for work done for any particular SRO, SRO member or Commission registrant.

b. *Comments received.* The commenters generally criticized proposed § 1.64(b)(2) as establishing criteria that were too narrow in delineating what constitutes a non-member under section 206 of the 1992 Act. CME, COMEX and NFA particularly commented that the restriction on registrants serving as non-member representatives would exclude non-contract market member FCMs, IBs, CPOs, CTAs and APs whose primary interest may be in having fair and efficient markets for their customers.

The CME contended that the qualifications for non-member representatives to SRO boards should be limited strictly to persons who are non-members of the SRO with the requisite expertise in futures trading or other eminent qualifications.

The CBT commented that requiring that a governing board non-member representative not have been an SRO member for the past year exceeded Congress' intent and should be limited to persons who are not current SRO members. In addition, NFA urged that § 1.64(b)(2) be revised to provide that not less than twenty percent of an SRO's governing board be comprised of persons who are not members of the particular SRO, rather than of any SRO.

CME, NFA and NYMEX each commented that the proposed exclusion of persons who earned over ten percent of their income from an industry-affiliated entity was not necessary. NYMEX added that if any such compensation qualification for SRO employment was kept, the Commission should excluded compensation for service on SRO governing boards and for non-full-time employment.

c. *Regulation 1.64(b)(1)*[9] upon its review of the comments, the Commission has decided to alter § 1.64(b)(1) in several respects. Final § 1.64(b)(1) will require, as did the proposed version, that twenty percent or more of the regular voting members of each SRO governing board[10] be comprised of persons who "are knowledgeable of futures trading or

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[6] Proposed § 1.64(b)(1) has been renumbered Regulation 1.64(b)(3).

[7] Final § 1.64(b)(1) and (2) similarly require that SROs submit standards and procedures implementing the governing board composition requirements regarding non-member and commercial interest representatives, respectively. Each SRO's conforming standards and procedures must be submitted to the Commission for its review 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.

[8] Final § 1.64(a)(4) defines what constitutes a "membership interest" for both contract markets and registered futures associations. Section 1.64(a)(4)(i) defines the following as separate membership interests at each contract market:

(A) floor brokers,

(B) floor traders,

(C) futures commission merchants,

(D) producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) other market users or participants . . .

For the purposes of § 1.64(b)(3)'s governing board composition requirements, § 1.64(a)(4)(ii) defines the following as separate membership interests at each registered futures association:

(A) futures commission merchants [("FCMs")],

(B) introducing brokers [("IBs")],

(C) commodity pool operators [("CPOs")],

(D) commodity trading advisors [("CTAs")]; and,

(E) associated persons [("APs")].

Of course, SROs may choose to recognize additional types of membership interests at their particular SRO.

[9] Proposed § 1.64(b)(2) has been renumbered as § 1.64(b)(1).

[10] Section 1.64(a)(3) defines a "regular voting member of a governing board" to mean "any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board."

financial regulation or are otherwise capable of contributing to governing board deliberations."

In setting the additional qualifications for non-member board representatives, the Commission has determined to exclude persons who are currently salaried employees of the SRO, as well as persons who primarily perform services for SRO in capacity other than as a member of that SRO's governing board.[11]

Section 1.64(b)(1) further provides that a person who serves on an SRO governing board will not be precluded from qualifying as a non-member of that SRO solely because of such service. This provision addresses the situation of non-member representatives to SRO governing boards who might otherwise become ineligible to serve as non-member representatives because of their board service.

The Commission agrees with the commenters that the proposed restriction on Commission registrants and their employees becoming non-member representatives to SRO governing boards would have excluded an important class of persons who have an expertise in futures trading, are significant users of the markets and are not necessarily closely aligned with any particular membership interest at a given SRO. Accordingly, under final § 1.64(b)(1), registration, in itself, will not render a person ineligible to serve as a non-member representative to an SRO governing board.

The Commission, however, has determined to retain § 1.64(b)(1)'s basic restriction on SRO members and their employees becoming non-member board representatives. As adopted, Commission § 1.64(b)(1)'s definition of an SRO non-member excludes persons who are members of the SRO and persons who are "officers, principals or employees of a firm which holds a membership at the [SRO] either in its own name or through an employee on behalf of the firm." The Commission believes that this approach to SRO members and their related officers, principals and employees is consistent with section 206's goal of ensuring that there always will be a twenty percent segment of each SRO governing board which will not have an exclusively member perspective.[12]

While § 1.64(b)(1)'s non-member representation requirements are based on the statutory directive of section 206 of the 1992 Act, neither section 206 nor any other provision of the 1992 Act defined "non-member." Section 404 of the 1992 Act, however, defines a contract market member as being "an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on a contract market or given members' trading privileges thereon." The Commission believes that CME's suggestion that Commission § 1.64(b)(1) treat any person who is an employee of a member of a given SRO as a non-member of that SRO would have unsatisfactory results and would be inconsistent with the fundamental intent of section 206. For example, under CME's approach, a person working for a firm which owned a membership at an SRO, could qualify as a non-member representative to the SRO's governing board regardless of how intimately involved the person was in the firm's operations at the SRO, so long as the person did not personally hold a membership or trading privileges at the SRO. While such a person would not be a "member" under section 404 of the 1992 Act, the Commission believes that it would be unreasonable to conclude that such a person could serve on an SRO board independent of his or her employing member's interests.

After full consideration of this issue, the Commission has concluded that there is no principled regulatory scheme which could effectively and reliably distinguish between employees of a member of an SRO who could and could not be expected to serve as independent and contributing non-member representatives to that SRO's governing board. The Commission believes that this view is consistent with the basic tenet of agency law that an agent's acts or knowledge may be imputed to its controlling principal. This notion is codified in section 2(a)(1)(A)(iii) of the Act which states that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person."[13]

The Commission seeks to clarify that § 1.64(b)(1) requires that there be a minimum of twenty percent non-SRO member representation on SRO governing boards. Any SRO composition scheme which was less than twenty percent representation for non-SRO members would be inconsistent with the 1992 Act and this provision. For example, an SRO governing board of seventeen persons must have at least four non-member representatives. This is required although, in fact, three non-members, constituting 17.6% of such a board, may be closer to twenty percent than four non-members, constituting 23.5% of such a board.[14]

4. Governing Board Commercial Interest Representatives

a. *Proposed regulation.* As proposed, Commission § 1.64(b)(3) stated that each contract market must adopt a rule which requires that at least ten percent of the regular voting members of its governing board be comprised of persons who primarily produce, manufacture, process, export, merchandise or commercially use any of the commodities underlying a futures product traded on that contract market. Like the other SRO board composition requirements of proposed § 1.64, the requirement for representation of commercial interests on contract market governing boards was intended to ensure effective representation for all market participants in each contract market's decisionmaking process.

b. *Comments received.* The CSC commented that commercial interest representatives should include not only individuals but also employees of corporations or other commercial entities. The CSC also contended that section 206 of the 1992 Act only imposes the ten percent requirement where the Commission determines that such a requirement is applicable and that, accordingly, the Commission should determine which contract markets need commercial representation on their governing boards.

Sunkist supported § 1.64(b)(3) and its general intent of providing market

[11] In deciding whether a person primarily performs services for an SRO, the SRO should exclude any person who spends over half of his or her working time providing services to that particular SRO, regardless of the compensation arrangement.

[12] The Commission may refine the parameters of what constitutes a non-member under § 1.64(b)(1), however, if the SRO's implementation of this provision does not ensure that each SRO governing board has a segment of representatives which can act independent of membership interests at that SRO.

[13] The NYCE has suggested that § 1.64(b)(1) require that each SRO governing board include twenty percent non-SRO members, with at least one-third of that segment being neither officers, principals or employees of an SRO member. This approach would not ensure that there be a twenty percent segment of each board which will be independent of any membership interest perspective.

[14] The Commission notes that in addition to its obligations under § 1.64(b)(1), each SRO has an independent obligation to comply with the prohibitions on voting by interested governing board members as established by section 217 of the 1992 Act and any Commission regulation promulgated thereunder.

participants with representation on SRO governing boards. It pointed out that western citrus interests are not currently represented on NYCE's governing board and that the Commission's proposal might help to ensure fair representation for such interests.

c. *Section 1.64(b)(2).*[15] In response to CSC's comment, final § 1.64(b)(2) clarifies that its ten percent commercial interest representative requirement may be met by "persons representing" the appropriate businesses.

In further response to CSC, the Commission notes that section 206's and § 1.64(b)(2)'s references to having commercial interest representation "where applicable" provides discretion as to an SRO's choice of an appropriate type of enumerated commercial interest representative for its board.

As with the percentage calculation of non-member representatives on SRO governing boards, any contract market governing board composition scheme in which the percentage of commercial interest representatives must be rounded-up to reach ten percent of the board would be inconsistent with § 1.64(b)(2).

In complying with § 1.64, the Commission wishes to clarify that SROs may use a single person to help meet more than one of the governing board composition requirements. For instance, a board member representing a commercial concern who is also a non-SRO member, may count towards both the ten percent commercial interest and twenty percent non-member representation requirements.

5. Major Disciplinary Committee Definition

a. *Proposed regulation.* In its proposed rulemaking, the Commission proposed § 1.64(b)(4) through (6) which would establish compositional requirements for SRO major disciplinary committees consistent with the statutory directives of section 206 of the 1992 Act. Under proposed § 1.64(a)(2), a "major disciplinary committee" was defined as a panel of persons who, as a group, were "empowered by [an SRO] to bring disciplinary charges, to conduct disciplinary hearings, to settle disciplinary charges, to impose sanctions or to hear appeals thereof."

The Commission proposed to define major disciplinary committees in terms of panels which operate as a group in conducting disciplinary matters because it believed that any disciplinary matter which was significant enough to warrant an adjudicatory panel, should require the protections of § 1.64(b)(4) through (6).

The Commission also stated its belief that the ability "to bring disciplinary charges, to conduct disciplinary hearings, to settle disciplinary charges, to impose sanctions [and] to hear appeals" are each disciplinary powers which could have a detrimental effect if they were not applied fairly and impartially. Accordingly, the Commission's proposed definition of a major disciplinary committee would have covered any SRO panel which had any one of these powers.

b. *Comments received.* The commenters contended that the definition of major disciplinary committee should be narrowed. The CBT commented that the definition should not include panels which issue charges but do not hold adjudicative hearings. CBT argued that the benefits of the major disciplinary committee composition requirements would still be fully obtained by limiting the definition to hearing and appellate committees.

The NYCE recommended that the definition be clarified to cover panels which impose disciplinary sanctions, rather than any type of sanction, since delivery committees, which impose penalties for delivery disputes, otherwise could be considered major disciplinary committees.

The CME and CSC each urged that major disciplinary committees be defined in terms of the type of rule violation involved. The CME contended that any committee considering a disciplinary matter involving a "disciplinary offense," as that term is defined in Commission § 1.63,[16] should be a major disciplinary committee for purposes of § 1.64.

c. *Regulation 1.64(a)(2).* Based upon the CBT's and NYCE's comments the Commission has revised the definition of major disciplinary committee to include "a committee of persons who are authorized by [an SRO] to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof" for certain types of enumerated cases.[17] While the Commission has adopted the CBT's recommendation to delete charging committees from this definition, it has decided to retain committees which settle disciplinary charges and impose disciplinary sanctions. Section 206 prescribes composition requirements for major disciplinary committees in order to "ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties." The Commission believes that the settlement of disciplinary charges and the imposition of disciplinary sanctions both constitute the assessment of penalties and that panels which exercise such powers should be subject to § 1.64's composition requirements.

The Commission also has decided to follow CME's suggestions and, thus, has defined major disciplinary committees as disciplinary committees which are concerned with cases involving SRO rule violations which qualify as § 1.63 disciplinary offenses.[18] Under this approach, the Commission is assured that major disciplinary committees will be concerned with serious SRO rule violations. Additionally, because of their compliance with current § 1.63, the SROs should already have established their respective sets of "disciplinary offenses."[19] This should facilitate each SRO's ability to distinguish major and non-major disciplinary committees when implementing the composition requirements of § 1.64(c) (1) through (4).

The Commission believes that § 1.64(a)(2)'s definition of major disciplinary committee should ensure

[15] Proposed § 1.64(b)(3) has been renumbered as § 1.64(b)(2).

[16] Commission § 1.63, which is being amended as part of this same rulemaking, See section II.C., below, disqualifies persons who have committed disciplinary offenses from serving on various SRO bodies. The disqualifying disciplinary offenses include, among other things, various types of SRO rule violations.

[17] The Commission understands that at most SROs, governing boards hear appeals of disciplinary matters and, thus, qualify as major disciplinary committees under § 1.64(a)(2). In such a case, the Commission will only require that a governing board conform with § 1.64(b)'s board composition requirements, including when the governing board is considering a disciplinary case.

[18] Section 1.64(a)(2) defines an SRO major disciplinary committee as any committee which has disciplinary jurisdiction over cases involving:

* * * any violation of the rules of the [SRO] except those which:

(i) Are related to:

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping; and,

(ii) Do not involve fraud, deceit or conversion.

The types of rule violations listed in § 1.64(a)(2) do not duplicate the SRO rule violations which constitute a § 1.63 disciplinary offense as § 1.63 also defines disciplinary offenses to include reporting or recordkeeping violations which result in an aggregate of more than $5,000 in fines in one calendar year. This aspect of the definition was not incorporated in § 1.64(a)(2), which defines major disciplinary committees exclusively in terms of the type rule violations over which such committees have jurisdiction and not the size of any possible sanctions.

For the purposes of § 1.64(a)(2)(i)(A), SRO violations related to decorum include trading decorum violations for which SROs summarily impose minor penalties such as bidding through offers.

[19] See section II.C.3., below, for a discussion of the list of § 1.63 disciplinary offenses each SRO is expected to maintain and publicize.

that persons who are involved in serious disciplinary matters will receive the protections offered by § 1.64(c)'s composition requirements for major disciplinary committees, while also ensuring that SRO disciplinary committees and personnel who deal with minor SRO disciplinary violations will be able to dispose of such matters in an efficient and expeditious manner.[20]

6. Major Disciplinary Committee Diversity Standards

a. *Proposed regulation.* Section 206 of the 1992 Act amended sections 5a(15)(A) and 17(b)(12)(A) of the Act to require that the major disciplinary committees of contract markets and registered futures associations, respectively, have a diversity of membership sufficient to ensure fair proceedings. In order to implement these provisions, the Commission proposed § 1.64(b)(4) which would require that each SRO maintain rules specifying diversity standards for its major disciplinary committees. As part of this proposal, the Commission stated that responsive SRO rules should establish some form of categorical representation on major disciplinary committees in order to ensure that the persons discharging disciplinary responsibilities would treat accused parties fairly and impartially.

b. *Comments received.* The CME submitted the only comment with respect to § 1.64's diversity standards for major disciplinary committees. The CME stated that it was not necessary to impose a system of fixed categorical representation on major disciplinary committees. The CME contended that the Commission could inspect the minutes of disciplinary hearings during rule enforcement reviews and verify that each SRO was complying with the diversity standards set forth in section 206 of the 1992 Act.

c. *Regulation 1.64(c)(4).*[21] As with § 1.64(b)(1)'s standard for diversity on SRO governing boards, § 1.64(c)(4) has been modified to provide discretion to SROs in ensuring that a diversity of membership interests are represented on their major disciplinary committees. The Commission will not require that each SRO establish a quota system regarding participation in any particular type of major disciplinary committee proceeding. The Commission, however, will require that each SRO have some established methodology for the selection of major disciplinary committee members which will prevent discriminatory treatment for the subjects of disciplinary matters.

The composition requirements of § 1.64(c)(4), as well as those of the other provisions of § 1.64(c), apply independently to each major disciplinary committee and to any hearing panel thereof. Accordingly, under § 1.64(c)(4), a hearing panel of a major disciplinary committee would itself have to include a diversity of membership interests, even if the hearing panel was a subcommittee of a larger major disciplinary committee which properly included a diversity of membership interests.

7. Major Disciplinary Committee Non-Member Representatives

a. *Proposed regulation.* The Commission's proposed rulemaking also included a § 1.64(b)(5) which would have required that each SRO specify by rule that each of its major disciplinary committees have at least one member who is not a member of the SRO. This requirement would have applied to all SRO major disciplinary committees proceedings, regardless of the person or rule violation involved in the proceeding.

b. *Comments received.* Some of the commenters criticized proposed § 1.64(b)(5) for requiring that major disciplinary committees include a non-member at all of their proceedings. The CBT indicated that this approach would be burdensome, would undercut SRO self-policing and could be costly if SROs had to pay non-members. The CME, CSC and NFA all urged the Commission to limit the scope of major disciplinary committee hearings for which a non-member must participate. CSC and NFA pointed out that section 206 of the 1992 Act only requires non-member participation in cases where the subject of the proceeding is a member of the governing board or of a major disciplinary committee, where there is a charge of manipulation and where appropriate to carry out the purposes of the 1992 Act. They both urged that the Commission modify the scope of proposed § 1.64(b)(5) accordingly.

The CME believed that it was not necessary to include non-members on major disciplinary committees unless they were hearing cases which involved § 1.63 "disciplinary offenses."

c. *Section 1.64(c)(1).*[22] The Commission has revised § 1.64(c)(1) by limiting the type of cases for which an SRO major disciplinary committee must include a person who is a non-member of that SRO. Consistent with the minimum conditions set by Section 206 of the Act, § 1.64(c)(1)(i) requires that SRO major disciplinary committees include a non-SRO member whenever the subject of the proceeding is a member of the SRO's governing board or major disciplinary committee or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract.

Final § 1.64(c)(1)(ii) also requires that contract market major disciplinary committees include a non-member whenever the rule violation they are considering involves conduct by a member which "directly results in financial harm" to a non-member of the contract market.[23] The Commission believes that this approach isolates the types of cases for which an outside presence or witness is most essential—cases involving alleged violative behavior by a contract market member that cause specific injury to a non-member of the contract market.

Section 206(c)(3) of the 1992 Act specifies that "at a minimum," the Commission's implementing regulations require that SRO major disciplinary committees include non-SRO member representatives when considering cases involving manipulation or members of SRO governing boards or major disciplinary committees. In addition, section 206(a) states that the Commission may require a non-member presence on major disciplinary committees "where appropriate to carry out the purposes" of the Act. Consistent with section 206's directive, the Commission believes that in contract market major disciplinary committee proceedings which involve the treatment of non-members by members, fairness requires that the accused contract market member not be judged exclusively by persons who might have close, daily contact with the accused member.

Based upon the NFA's comments, the Commission has determined to not require registered futures association major disciplinary committees to have a

[20] As part of this rulemaking, the Commission also has amended Commission § 1.63(a)(2)'s definition of "disciplinary committee" under final § 1.64(a)(2). Accordingly, a § 1.63(a)(2) "disciplinary committee" would include any person or panel authorized by an SRO to "conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions and to hear appeals thereof."

[21] Proposed § 1.64(b)(4) has been renumbered as § 1.64(c)(4).

[22] Proposed § 1.64(b)(5) has been renumbered as § 1.64(c)(1).

[23] By referring to conduct which "directly results in financial harm" to a non-member, § 1.64(c)(1)(ii) includes particularized behavior which results in financial harm to specific non-members and excludes acts which might have had a general effect on the market as a whole.

non-member representative when considering cases involving either manipulation or financial harm to non-members of the association. In the first instance, manipulation cases would be outside the disciplinary jurisdiction of registered future associations. Such associations, however, do consider disciplinary cases involving members causing financial harm to non-members. Nonetheless, for a number of reasons, the Commission does not believe it necessary to have a non-member presence on major disciplinary committees hearing such cases. First, NFA, the only current registered futures association, has a widespread membership across the country. Accordingly, it likely will be the case that NFA members serving on major disciplinary committees will not have had close, daily contact with an NFA member who is the subject of a disciplinary hearing. By comparison, contract market members customarily have closer professional relationships with one another.

Second, virtually every NFA disciplinary matter involves financial harm to non-members. The Commission believes that requiring NFA to have a non-member on its major disciplinary committees nearly every time that they convene would be extremely burdensome to the NFA. By comparison, contract market major disciplinary committees generally hear a wider variety of cases including many which pertain to member conduct not involving financial harm to a non-member. Accordingly, the Commission has decided to limit the non-member representative requirement for registered futures association major disciplinary committees to those disciplinary cases where the accused is either a member of the association's governing board or major disciplinary committee.

The Commission also seeks to clarify two points with respect to final § 1.64(c)(1). First, the non-member requirement applies whenever a major disciplinary committee convenes for any of the enumerated types of cases.

Second, NYMEX has indicated to the Commission that there are circumstances in which major disciplinary committees have to act in an expedited fashion because time is of the essence. For instance, some contract markets, such as NYMEX, have major disciplinary committees which respond to serious infractions by imposing sanctions at the same time or on the same day as the infractions. In these circumstances, it may be difficult for an SRO to secure a qualified non-member representative to participate on its major disciplinary committee. In such instances, the Commission will allow SRO major disciplinary committees to proceed without a non-member representative.

If an SRO major disciplinary committee so convenes without a required non-member representative, the SRO must document its efforts to include a non-member and its reasons for proceeding without one. The Commission stresses that this exception is limited to instances where SRO major disciplinary committees must immediately address violative behavior due to possible market ramifications, and not simply because it is an SRO's practice. The Commission will carefully monitor the SROs to ensure that this exception is not used to circumvent the purpose of § 1.64(c)(1). This exception only applies to § 1.64(c)(1)'s non-member representative requirement for SRO major disciplinary committees and not to the diversity or differing membership interest requirements applicable to such committees under § 1.64(c) (2) through (4). The Commission believes that those other requirements can be met with SRO members, who should be more accessible on short notice than non-SRO members.

8. Major Disciplinary Committee Representatives of Differing Membership Interests

a. *Proposed regulation.* In response to section 5a(15)(B), as it was amended by section 206 of the 1992 Act, the Commission proposed a § 1.64(b)(6) mandating that each SRO establish rules requiring that more than fifty percent of each major disciplinary committee be made up of persons representing a membership interest other than that of the person who was the subject of the disciplinary proceeding.

The premise of proposed Commission § 1.64(b)(6) was that persons who work in close proximity to one another may not be, or may not appear to be, objective in adjudicating disciplinary proceedings involving their colleagues. By requiring that half of each major disciplinary committee consist of persons who have a different membership interest than the accused, proposed § 1.64(b)(6) was intended to prevent the possibility of preferential treatment in disciplinary proceedings.

b. *Comments received.* NFA made two comments pertinent to proposed § 1.64(b)(6). First, NFA pointed out that section 206 requires only that NFA disciplinary panels include "qualified persons representing segments of the association membership other than that of the subject of the proceeding" without any fifty percent criteria. Second, NFA urged that APs not be considered an individual membership interest category. NFA indicated that because nearly all of their business conduct committee ("BCC") members are APs, it would be difficult to secure non-APs to hear BCC cases involving APs. NFA suggested that for the purposes of defining NFA's different membership interests, APs be classified according to the membership interest of their sponsoring member.

In addition, the CME and CSC both requested that the Commission clarify various aspects of the membership interest definition related to proposed § 1.64(b)(6).

c. *Section 1.64(c) (2) and (3).* The Commission has revised proposed Regulation 1.64(b)(6) and divided it into two final regulations—§ 1.64(c)(2) addressing contract markets and § 1.64(c)(3) addressing registered futures associations.

Under § 1.64(c)(2), more than half of the members of each contract market major disciplinary committee must be drawn from membership interest groups other than the membership interest of the subject of the proceeding. Based upon § 1.64(a)(4)'s definition of membership interest, if the subject of a proceeding is a floor broker, fifty percent of the major disciplinary committee members considering the case must consist of persons who are not floor brokers.

For the purposes of § 1.64(c)(2), a contract market may alternatively choose to define membership interests according to the different pits or commodities traded at the SRO. So, for example, a contract market with five trading pits could decide to group its members according to the trading pit that each member primarily trades in. In such a case, if a major disciplinary committee at the SRO heard an appropriate case involving a member who primarily traded in pit one, under § 1.64(c)(2), at least fifty percent of the committee would have to consist of persons who were not members who primarily traded in pit one. With respect to the formulation of such alternative definitions of membership interests, the Commission reminds each contract market to adhere to the basic premises of § 1.64(c)(2) that at least fifty percent of each major disciplinary committee consist of persons who do not have relations with the accused member which might affect their objectivity.

In accordance with NFA's suggestions, § 1.64(c)(3) has been revised to require that each registered futures association major disciplinary committee include some persons

representing membership interest groups other than that of the proceeding's subject. For these purposes, NFA's membership interest groups are FCMs, IBs, CPOs and CTAs, with APs being deemed to belong to the membership interest group of its sponsoring member. The Commission believes that this approach is reasonable in that it is customary to expect that an AP's self-interests will be more closely aligned with those of its type of NFA member sponsor than with those of the general class of APs.

Accordingly, final Commission § 1.64(c) conforms to Section 206's intent that each major SRO disciplinary committee include persons with different self-interests than the accused in order to encourage objectivity and discourage preferential treatment in disciplinary proceedings.

9. Governing Board Composition Reporting Requirement

a. *Section 1.64(d).* The Commission did not propose any reporting requirement with respect to the composition of SRO governing boards in its proposed Commission § 1.64. The Commission has determined, however, that such a requirement will facilitate the Commission's ability to oversee and enforce each SRO's compliance with § 1.64(b)'s governing board composition requirements. Accordingly, final § 1.64(d) requires that each SRO submit to the Commission, within thirty days after each governing board election, a list of the board's members, the membership interests they represent and a demonstration of how the board's composition is consistent with § 1.64(b) and the SRO's own implementing standards and procedures. Each SRO's submission should particularly describe the qualifications of each non-member representative to its governing board.[24]

In addition to the reporting requirement, the Commission reminds each SRO that it has a continuing obligation under section 5a(8) of the Act and Commission § 1.51, or section 17(q) of the Act in the case of NFA, to take whatever steps may be necessary to ensure that its governing board is in compliance with § 1.64(b) and any SRO standards and procedures which implement § 1.64(b).

[24] Contract markets have been providing similar governing board information to the Division of Trading and Markets ("Division") since 1991 pursuant to an informal agreement between the Division and the members of the Joint Compliance Committee.

B. Customer Notification of Disciplinary Actions

1. *Proposed regulation.* In its rulemaking, the Commission proposed a § 1.64(c) which required that whenever a contract market took final disciplinary action against a member for trading violations resulting in financial harm to a customer, the contract market must provide written notice of the action to the FCM that cleared the transaction.[25] In addition, § 1.64(c) proposed to require that a clearing FCM provide the same written notice to the customer involved, or, in a case where two or more FCMs have cleared and carried the transaction, each FCM involved provide written notice to the FCM with which it dealt until notice was provided to the ultimate customer. The written notice describing the disciplinary action was to include the principal facts of the case along with the same type of information required in Regulation 9.11 notices.

2. *Comments received.* The commenters suggested that certain substantive refinements be made to the proposed customer notification provision. The CBT and COMEX commented that the requirement of section 206 of the 1992 Act and proposed § 1.65 that a customer notice include "the principal facts of the case involved" conflicted with section 8c(1)(B) of the Act, which prohibits contract markets from disclosing disciplinary matters to third parties. Accordingly, they suggested that the provision should only require the same information which would be provided in a § 9.11 notice.

The CSC commented that it would be unfair and prejudicial to notify a member's customer of a disciplinary action involving that member while appeal proceedings were still pending before either the contract market or the Commission. Finally, NYMEX suggested that the provision be amended to provide that any action based upon a settlement agreement without an adjudication of the truth of the allegations should not require customer notice.

3. *Section 1.67.*[26] Final § 1.67 continues to require that upon any disciplinary action involving a member causing financial harm to a non-member, the contract market must provide notice thereof to the clearing FCM involved and each FCM in the clearing and carrying chain must continue to pass on such notice until it reaches the ultimate customer. For purposes of this provision, the ultimate customer can be either an ordinary individual customer or a CPO or foreign broker who maintains an account at the FCM. Although entities such as CPOs and foreign brokers will not be required by § 1.67 to provide notice to their customers, they may have an independent obligation to provide such notice.

The notice required by § 1.67 must include the principal facts of the case as well as an indication that the contract market found that the violative behavior caused financial harm to the customer. The Commission has determined that the contents of a proper § 9.11 notice should be sufficiently informative to ensure that a public customer who receives such a notice will be able to exercise effectively their rights with respect to the treatment of their orders by contract market members.[27]

The Commission also has revised § 1.67's definition of "final disciplinary action" so that contract markets will not be required to issue a notice of customer financial harm until the member involved has exhausted his or her appeal rights at the contract market. With this approach, members will be able to fully defend their cases before the contract market, while still assuring prompt notice to injured customers.[28]

[25] For these purposes, proposed § 1.64(a)(5) defined "final disciplinary action" to mean any contract market final decision as that term is defined by contract market rules implementing the requirements of Commission § 8.20 and 8.28. Accordingly, a "final disciplinary action" under proposed Commission § 1.64 included all disciplinary committee decisions, regardless of whether such a decision was on appeal at the contract market, and all settlement agreements.

[26] Based upon an organizational recommendation from the CSC, the Commission has determined that it is more appropriate for the customer notification requirement to be contained in its own § 1.67, separate from the composition requirements of § 1.64. While the composition and customer notification requirements are both derived from section 206 of the 1992 Act, the Commission believes that addressing both subject matters in a single regulation could be confusing to regulatees and the public.

[27] Commission § 9.11(b) requires that notices of exchange disciplinary actions include:

(1) The name of the person against whom the disciplinary action or access denial action was taken;

(2) A statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action;

(3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed;

(4) The terms of the disciplinary action or access denial action; [and,]

(5) The date on which the action was taken and the date the exchange intends to make the disciplinary or access denial action effective . . .

[28] Section 1.67's definition of final disciplinary action is substantially identical to the definition for

Continued

With respect to NYMEX's suggestion regarding notice upon settlement agreements, the Commission points out that section 206 of the 1992 Act requires a contract market to issue a notice whenever the "contract market takes final disciplinary action against a member" for violative behavior which causes financial harm to a customer. The provision does not create any exception for settlement agreements or for any particular type of settlement agreement (*i.e.*, ones that do or do not adjudicate the truth of the allegations involved.) Accordingly, Regulation 1.67's notice requirement is triggered by each of these types of SRO actions.[29]

A customer who is notified of an abuse of his order by a contract market member, of which he might otherwise have been ignorant, will be better able to evaluate his business relationship with the member or to initiate legal action. Additionally, Regulation 1.67's notice requirement should generate closer scrutiny of exchange activities by market users.

C. Prohibition of Oversight Panel Service

1. *Proposed regulation amendments.* In compliance with section 206 of the 1992 Act, the Commission proposed amendments to existing § 1.63 which would disqualify persons with certain disciplinary histories from serving on any SRO oversight panel and which would require each SRO to implement rules in this regard.[30] Under the proposed amendments, a person who was found to have committed a disciplinary offense, would be barred from oversight panel service for a period of three years from the date of such finding or for the length of any criminal sentence, SRO expulsion or suspension, Commission registration suspension, or failure to pay a disciplinary fine, resulting from the finding, whichever was longer.[31]

The proposed amendments to § 1.63(a) would define an SRO oversight panel to mean any body of persons having the authority to "review, recommend or establish policies or procedures with respect to the self-regulatory duties of the [SRO], including, but not limited to, compliance activities and disciplinary policies."

As directed by section 206 of the 1992 Act, the Commission also proposed to amend § 1.63(d) to require that each SRO establish, maintain and make available to the general public a notice of all those rules of the SRO which if violated would constitute a "disciplinary offense" under § 1.63. The requirement was intended to enable any person who had been found to have committed a rule violation by an SRO to determine whether that violation was in fact a "disciplinary offense" for the purposes of § 1.63 and whether he or she would be disqualified from SRO committee service for a prescribed period.

2. *Comments received.* Several commenters criticized the proposed definition of oversight panel as being too broad. CME, CSC, NYCE and NYMEX each suggested alternative definitions which generally focused on bodies which oversee an SRO's surveillance, compliance, rule enforcement and disciplinary procedures.

3. *Amended regulation 1.63.* In accordance with the commenters' suggestions, the Commission has amended § 1.63(a)(4) to define "oversight panels" as panels which oversee an SRO's policies or procedures with respect to its surveillance, compliance, rule enforcement or disciplinary responsibilities.[32] Section 1.63's service prohibition applies to each committee which exercises any of the enumerated oversight duties, even if such duties are only part of the committee's responsibilities. Accordingly, SRO committees, such as executive committees which have a wide range of duties in addition to oversight duties, will still be considered an "oversight panel" for purposes of Commission § 1.63.

The Commission also is revising § 1.63(d) to require that each SRO submit its listing of disciplinary offenses to the Commission at the beginning of each calendar year to the extent necessary to reflect any revisions to the list over the previous year. This requirement would assist the Commission in monitoring each SRO's compliance with § 1.63.[33]

D. Submission of Rules Complying With Regulations 1.63 and 1.64

1. *Amended § 1.41(d).* The Commission has amended its § 1.41(d) to make clear that contract market rules which address § 1.63 and 1.64's requirements for SRO boards and committees are not exempt from the filing requirement of section 5a(a)(12)(A) of the Act and Commission § 1.41. Previously, 1.41(d) may have created a conflict with § 1.63 and 1.64 as § 1.41(d) exempted rules addressing the "organization and administrative procedures of a contract market's governing bodies" from the Commission's rule-filing requirements.

E. Additional Requirements of Section 206 of the 1992 Act

The Commission notes that various other requirements of section 206 of the 1992 Act are satisfied by Commission § 1.63, thus eliminating the need to establish any new Commission regulations. For instance, section 206 of the 1992 Act requires that SROs prohibit disciplinary committee service by persons with certain disciplinary records. As indicated above, Commission § 1.63 already prohibits service on SRO disciplinary committees, as well as on governing boards and arbitration panels, by persons who have committed certain enumerated disciplinary offenses.

III. Conclusion

The final § 1.64 and 1.67 and final amendments to §§ 1.41 and 1.63 implement the statutory directives of sections 5a, 8c and 17 of the Act, as they were amended by section 206 of the 1992 Act, with respect to composition of SRO governing boards and major disciplinary committees, restrictions on SRO oversight panel service and disciplinary action notices for customers.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract

that term in Commission § 1.63. The term is used in § 1.63 to establish when a finding of a disciplinary offense will result in a bar to SRO committee service.

[29] It is unclear whether NYMEX believes that settlement agreements are not informative with respect to the behavior underlying the agreements. The Commission notes, however, that a contract market issuing a § 9.11(b) notice based upon a settlement agreement must include a statement as to the rule violations which the contract market has reason to believe were committed. Accordingly, this type of information should be of assistance to a customer who receives it pursuant to § 1.67's requirements.

[30] Commission § 1.63 already establishes disqualification standards for SRO disciplinary committees, arbitration panels and governing boards.

[31] Under Commission § 1.63, the disqualifying disciplinary offenses include, among other things, various SRO rule violations and any violation of the Act or the Commission's regulations.

[32] These responsibilities pertain to both the financial and trade practice requirements of an SRO.

[33] The CSC suggested in its comments that the Commission revise certain substantive provisions of current Commission Regulation 1.63. The Commission has determined to not revisit any other provisions of § 1.63 at this time.

markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets. 47 FR 18618, 18619 (April 30, 1982).

Furthermore, the Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals effecting registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986). Therefore, the Acting Chairman, 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. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). The OMB approved the collection of information associated with this rule on June 14, 1993 and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response; 613.26
Number of respondents; 4,295
Frequency of response; on occasion

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

Average burden hours per response; 1.25
Number of respondents; 27
Frequency of response; annually

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Registered futures associations, 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 by amending existing §§ 1.41 and 1.63 and by adopting new §§ 1.64 and 1.67 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 USC 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 revising paragraph (d) heading and (d)(1) introductory text to read as follows:

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

* * * * *

(d) *Rules that are exempt from the requirements of section 5a(a)(12)(A) of the Act.* (1) Except as otherwise provided by §§ 1.63 and 1.64, contract market rules that do not relate to terms and conditions are exempt from the requirements of section 5a(a)(12)(A) of the Act and this section where such rules address:

* * * * *

3. Section 1.63 is amended by redesignating paragraph (a)(6) as (a)(7); by redesignating paragraph (a)(4) as (a)(6); by adding a new paragraph (a)(4); and by revising paragraphs (a)(2), (a)(5), newly redesignated paragraph (a)(6), (b) introductory text, and (c) through (f) 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 panel authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

* * * * *

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

(5) *Final decision* means:

(i) a decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(6) *Disciplinary offense* means:

(i) any violation of the rules of a self-regulatory organization except those rules related to

(A) decorum or attire,

(B) financial requirements, or

(C) reporting or recordkeeping unless resulting in fines aggregating more than $5,000 within any calendar year;

(ii) any rule violation described in subparagraphs (a)(6)(i) (A) through (C) of this regulation which involves fraud, deceit or conversion or results in a suspension or expulsion;

(iii) any violation of the Act or the regulations promulgated thereunder; or,

(iv) any failure to exercise supervisory responsibility with respect to acts described in paragraphs (a)(6) (i) through (iii) of this section when such failure is itself a violation of either the rules of a self-regulatory organization, the Act or the regulations promulgated thereunder.

(v) A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any federal or state agency, or other governmental body.

(7) *Settlement agreement* means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which 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, that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels or governing board who:

* * * * *

(c) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b) (1) through (6) of this section.

(d) Each self-regulatory organization shall submit to the Commission a

schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (a)(6) (i) of this section and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. Each self-regulatory organization must maintain and keep current the schedule required by this section, post the schedule in a public place designed to provide notice to members and otherwise ensure its availability to the general public.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels or governing board pursuant to the requirements of this regulation during the prior year.

(f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels, oversight panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either Section 17(h)(1) of the Act or Commission regulation 9.11.

4. Section 1.64 is added to read as follows:

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees

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

(1) *Self-regulatory organization* means "self-regulatory organization" as defined in § 1.3(ee), not including a "clearing organization" as defined in § 1.3(d).

(2) *Major disciplinary committee* means a committee of persons who are authorized by a self-regulatory organization to conduct disciplinary hearings, 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 which:

(i) are related to:

(A) decorum or attire,

(B) financial requirements, or

(C) reporting or recordkeeping; and,

(ii) do not involve fraud, deceit or conversion.

(3) *Regular voting member of a governing board* means any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board.

(4) *Membership interest* (i) In the case of a contract market, each of the following will be considered a different membership interest:

(A) Floor brokers,

(B) Floor traders,

(C) Futures commission merchants,

(D) Producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) Participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) Other market users or participants; except that with respect to paragraph (c)(2) of this section, a contract market may define membership interests according to the different pits or principal groups of commodities traded on the contract market.

(ii) In the case of a registered futures association, each of the following will be considered a different membership interest:

(A) Futures commission merchants,

(B) Introducing brokers,

(C) Commodity pool operators,

(D) Commodity trading advisors; and,

(E) Associated persons, except that under paragraph (c)(3) of this section an associated person will be deemed to represent the same membership interest as its sponsor.

(b) Each self-regulatory organization must maintain in effect standards and procedures with respect to its governing board which have been submitted to the Commission pursuant to section 5(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That twenty percent or more of the regular voting members of the board are persons who:

(i) Are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to governing board deliberations; and,

(ii) (A) Are not members of the self-regulatory organization,

(B) Are not currently salaried employees of the self-regulatory organization,

(C) Are not primarily performing services for the self-regulatory organization in a capacity other than as a member of the self-regulatory organization's governing board, or

(D) Are not officers, principals or employees of a firm which holds a membership at the self-regulatory organization either in its own name or through an employee on behalf of the firm;

(2) In the case of a contract market, that ten percent or more of the regular voting members of the governing board be comprised where applicable of persons representing farmers, producers, merchants or exporters of principal commodities underlying a commodity futures or commodity option traded on the contract market; and

(3) That the board's membership includes a diversity of membership interests. The self-regulatory organization must be able to demonstrate that the board membership fairly represents the diversity of interests at such self-regulatory organization and is otherwise consistent with this regulation's composition requirements;

(c) Each self-regulatory organization must maintain in effect rules with respect to its major disciplinary committees which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That at least one member of each major disciplinary committee or hearing panel thereof be a person who is not a member of the self-regulatory organization whenever such committee or panel is acting with respect to a disciplinary action in which:

(i) The subject of the action is a member of the self-regulatory organization's:

(A) Governing board, or

(B) Major disciplinary committee; or,

(ii) Any of the charged, alleged or adjudicated contract market rule violations involve:

(A) Manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract, or

(B) Conduct which directly results in financial harm to a non-member of the contract market;

(2) In the case of a contract market, that more than fifty percent of each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered;

(3) In the case of a registered futures association, that each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and,

(4) That each major disciplinary committee or hearing panel thereof include sufficient different membership

interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's responsibilities.

(d) Each self-regulatory organization must submit to the Commission within thirty days after each governing board election a list of the governing board's members, the membership interests they represent and how the composition of the governing board otherwise meets the requirements of § 1.64(b) and the self-regulatory organization's implementing standards and procedures.

5. Section 1.67 is added to read as follows:

§ 1.67 Notification of final disciplinary action involving financial harm to a customer.

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

(1) *Final disciplinary action* means any decision by or settlement with a contract market in a disciplinary matter which cannot be further appealed at the contract market, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

(b) Upon any final disciplinary action in which a contract market finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(1)(i) the contract market shall promptly provide written notice of the disciplinary action to the futures commission merchant that cleared the transaction; and,

(ii) a futures commission merchant that receives a notice, under paragraph (b)(1)(i) of this section shall promptly provide written notice of the disciplinary action to the customer as disclosed on its books and records. If the customer is another futures commission merchant, such futures commission merchant shall promptly provide the notice to the customer.

(2) A written notice required by paragraph (b)(1) of this section must include the principal facts of the disciplinary action and a statement that the contract market has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer. For the purposes of this paragraph, a notice which includes the information listed in § 9.11(b) shall be deemed to include the principal facts of the disciplinary action thereof.

Issued in Washington, DC on June 29, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–16525 Filed 7–12–93; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–32586; File No. S7–34–92]

RIN 3235–AF67

Early Warning Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Securities and Exchange Commission (the "Commission") is amending Rule 17a–11 under the Securities Exchange Act of 1934 (the "Exchange Act"). The amendments are designed to reduce certain reporting burdens on brokers and dealers by eliminating, among other things, the current requirement that a broker or dealer submit supplemental reports to the Commission and other regulatory bodies when its net capital declines below certain specified levels, or in other instances that indicate the existence of financial or operational difficulties.

EFFECTIVE DATE: The amendments shall become effective on August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272–2904, Roger G. Coffin, (202) 272–7375, or Elizabeth K. King, (202) 272–3738, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a) of the Exchange Act provides the Commission with the authority to promulgate rules requiring registered broker-dealers to make and transmit reports that the Commission deems necessary in the public interest or for the protection of investors. Pursuant to this authority, the Commission adopted Rule 17a–11 (the "Rule") in 1971.[1] The Rule imposes a duty on broker-dealers to report net capital and other operational problems and to file reports regarding those problems within certain time periods. Although there have been minor revisions to the Rule since it was adopted, this is the first comprehensive examination of Rule 17a–11 in over 20 years. The Commission believes that the requirements to file FOCUS Reports may be eliminated without compromising the ability of the Commission or the Designated Examining Authorities ("DEAs") to monitor the condition of broker-dealers.

B. Proposal

On October 26, 1992, the Commission proposed for comment amendments to Rule 17a–11[2] that, in part, would relieve broker-dealers of the obligation to furnish the Commission with Part II or Part IIA of Form X–17A–5 ("FOCUS Report")[3] when their net capital declines below certain levels. During the public comment period, the Commission authorized the Division to issue a no-action letter permitting the DEAs to waive the requirement to file a FOCUS Report as currently required by paragraphs (a) and (b) of Rule 17a–11. In response to its proposal to amend Rule 17a–11, the Commission received two comment letters, one from the National Association of Securities Dealers, Inc. (the "NASD"), and one from the Chicago Mercantile Exchange (the "CME"), both of which supported the proposed amendments. The Commission is adopting the proposed amendments in substantially the form as proposed.

II. Rule Amendments

A. Paragraph (a)

Currently, paragraph (a) of Rule 17a–11 requires every broker-dealer whose net capital falls below its required minimum level, or whose total outstanding principal amounts of satisfactory subordination agreements exceed allowable levels for more than 90 days, to do two things. First, the broker-dealer must give notice of the event on that same day. Second, the broker-dealer must file a FOCUS Report within 24 hours of the notice.

The Commission is eliminating the requirement that broker-dealers file a FOCUS Report within 24 hours after notifying the Commission of a net capital deficiency. Broker-dealers will

[1] Securities Exchange Act Release No. 9268 (July 30, 1971), 36 FR 14725 (Aug. 11, 1971).

[2] Securities Exchange Act Release No. 31355 (Oct. 26, 1992), 57 FR 49156 (Oct. 30, 1992).

[3] FOCUS Reports contain schedules including the broker-dealer's: net capital; assets and liabilities; and income and expenses. Generally, Part IIA is filed by broker-dealers that do not clear or carry customer accounts, and those broker-dealers that are subject to the requirements of paragraphs (a)(2) and (a)(3) of Rule 15c3–1. Part II is filed by all other broker-dealers engaged in a general securities business and subject to paragraph (a)(1) of Rule 15c3–1.

remain obligated to transmit notice of a net capital deficiency on the same day of the occurrence. Unlike the previous rule, however, the amendments require the notice to specify the broker-dealer's net capital requirement and its current amount of net capital.[4] The amendments also require a broker-dealer who has been notified by the Commission or its DEA of a net capital deficiency to give notice of the deficiency, even if the broker-dealer disagrees with the Commission's or the DEA's determination. In such a case, the amendments permit the broker-dealer to specify the reasons for its disagreement in the notice.

The same-day notice requirement gives the Commission and the DEAs adequate early warning of financial or operational problems. After receiving notice of a capital deficiency, the Commission or a DEA will be able to increase its surveillance of a broker-dealer experiencing difficulty and to obtain any additional information necessary to assess the broker-dealer's financial condition.

The amendments also eliminate the notification requirement for broker-dealers whose total outstanding principal amounts of satisfactory subordination agreements exceed the maximum allowable for a period in excess of 90 days. A broker-dealer is currently required, pursuant to paragraph (c)(2) of Rule 15c3–1d, to give notice to its DEA if, after giving effect to all subordinated loans that are mature or which are scheduled to mature within six months, its net capital declines below the identical levels contained in paragraph (a) of Rule 17a–11. The Commission believes that the notice provided for in Rule 15c3–1d is sufficient to give regulators an early warning of problems involving a broker-dealer's subordinated loan agreements.

B. Paragraph (b)

Paragraph (b) of Rule 17a–11 currently requires every broker-dealer whose net capital does not equal or exceed a certain level to file a monthly FOCUS Report for at least three months. The capital level contained in paragraph (b) is higher than the minimum level referred to in paragraph (a), and is referred to as an "early warning level."[5] When a broker-dealer's net capital level is declining, it would first trigger the filing requirements set forth in paragraph (b) of the Rule. If the broker-dealer's net capital continues to drop, and it falls below the broker-dealer's base minimum capital requirement, the broker-dealer would be required to comply with the additional FOCUS Report filing and notice requirements of paragraph (a) of the Rule.

The amendments to paragraph (b) of the Rule eliminate the requirement that a broker-dealer file a FOCUS Report within 15 days after the end of each month for three successive months. In lieu of this requirement, the amendments require brokers-dealers to give notice promptly (but within 24 hours) after the event triggering the filing requirement. The Commission expects that this notice requirement will be sufficient to alert the Commission and the broker-dealer's DEA that a broker-dealer may be experiencing financial or operational difficulty. Thereafter, the Commission or the DEA may require any additional information that it deems necessary to monitor the condition of the broker-dealer.

In their comment letters, both the NASD and the CME supported the proposed elimination of the reporting requirements. The NASD and the CME agreed that prompt notice by a broker-dealer experiencing financial or operational difficulties will provide its DEA with sufficient early warning to monitor the broker-dealer's condition.

C. Paragraph (b)(4)

The Commission is amending certain other paragraphs of Rule 17a–11. For example, there are references in paragraph (b)(4) of Rule 17a–11 to three existing notice provisions set forth in the net capital rule requiring broker-dealers subject to those provisions to give notice in accordance thereto. However, paragraph (b)(4) of Rule 17a–11 does not reference all of the applicable net capital[6] or customer protection rule[7] notice provisions (such as the requirement to give notice of large withdrawals of capital under paragraph (e) of Rule 15c3–1), and the Commission believes it would be appropriate for the Rule to do so. Accordingly, the Commission is amending Rule 17a–11 to refer to five previously existing notice provisions contained in the net capital rule, the customer protection rule, and Rule 17a–5.

These amendments do not add any additional reporting burdens because they simply reference certain notice sections for clarification purposes and do not, by themselves, create an obligation to report. Additionally, the net capital rule, the customer protection rule and Rule 17a–5 will remain unchanged (with the exception of minor technical revisions to Rule 17a–5 and Rule 15c3–1d discussed below). Rather, the Rule will be clarified to contain a complete, rather than a partial, listing of the Commission's financial responsibility notice requirements.

D. Paragraph (c)

Under current paragraph (c) of Rule 17a–11, every broker-dealer is required to give notice immediately if it fails to make and keep current its required books and records. In order to clarify the time within which notice must be transmitted under paragraph (c) of the Rule, the amendments require notice to be provided the same day of the event.

E. Paragraph (f)

Paragraph (f) of the Rule (which will be redesignated as paragraph (g)) requires broker-dealers to give notice by telegraph and to transmit reports to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the broker-dealer has its principal place of business, and the broker-dealer's DEA. The amendments specify that notice required by the Rule may be given or transmitted by means of either a facsimile transmission or telegraph. The amendments also state that the report required by paragraph (c) or paragraph (d) of Rule 17a–11 may be transmitted by overnight delivery.

F. Other Amendments

The Commission is adopting amendments that reorganize the Rule 17a–11's structure and make certain technical revisions. For example, references in the current Rule to "his" will be changed to "its" in order to eliminate any gender-specific language.

In addition, because the amendments will redesignate the notice requirement currently contained in paragraph (f) of Rule 17a–11 to paragraph (g), certain sections of Rule 17a–5 that refer to paragraph (f) require technical modification. Accordingly, the Commission is adopting revisions to

[4] Many of the notices received by the Commission already contain this information. The Commission believes it would be appropriate, however, to specify the contents of the notice in the Rule to standardize the notices received.

[5] There are three early warning levels. First, a broker-dealer that has elected to compute its net capital under the basic method must give notice if its aggregate indebtedness, as defined in Rule 15c3–1, exceeds 1,200 percent of its net capital. Second, a broker-dealer that computes its net capital under the alternative standard is required to give notice if its net capital falls below 5 percent of its aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers under Rule 15c3–3. Third, a broker-dealer that computes its net capital under either standard is required to give notice if its total net capital declines below 120 percent of its minimum requirement. If a broker-dealer falls out of net capital compliance, it must comply with both paragraphs (a) and (b) of Rule 17a–11.

[6] Rule 15c3–1 (17 CFR 240.15c3–1).

[7] 17 CFR 240.15c3–3.

certain sections of Rule 17a–5 that would change the references to paragraph (f) of Rule 17a–11 to paragraph (g).

Finally, paragraph (c)(5)(i) of Rule 15c3–1d permits a broker-dealer to obtain temporary subordinated loans in certain circumstances in order to participate in activities such as securities underwritings. Currently, Rule 15c3–1d prohibits a broker-dealer from entering into a temporary subordinated loan during any period in which the broker-dealer is subject to "any of the reporting provisions" of Rule 17a–11.[8] This provision was intended to cover the period in which a broker-dealer was required to file FOCUS reports under Rule 17a–11, which requirement is being eliminated by the Commission.

In order to retain the net capital rule's prohibition against a broker-dealer obtaining a temporary subordinated loan during a period of financial or operational difficulty, the Commission is making a technical amendment to paragraph (c)(5)(i) of Rule 15c3–1d. Based on a recommendation by the NASD, paragraph (c)(5)(i) is being amended to prohibit a broker-dealer from obtaining a temporary subordinated loan if it has given notice under Rule 17a–11 within the preceding thirty calendar days. This amendment will enable the DEAs to prevent a broker-dealer from obtaining temporary subordinated loans during periods in which the broker-dealer may be experiencing financial or operational difficulties.

III. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 concerning the final rule amendments. The FRFA states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the FRFA may be obtained by contacting Elizabeth K. King, Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549, (202) 272–3881.

IV. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly section 15 thereof, 15 U.S.C. 78o, the Commission is amending §§ 240.17a–11, 240.17a–5, and 15c3–1d of Title 17 of the Code of Federal Regulations in the manner set forth below.

[8] 17 CFR 240.15c3–1d(c)(5)(i).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. § 240.15c3–1d is amended by revising the second sentence of the introductory text of paragraph (c)(5)(i) to read as follows:

§ 240.15c3–1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(c) * * *

(5) * * *

(i) * * * This temporary relief shall not apply to a broker or dealer if, within the preceding thirty calendar days, it has given notice pursuant to § 240.17a–11, or if immediately prior to entering into such subordination agreement, either:

* * * * * *

2. § 240.17a–5 is amended by revising paragraph (c)(2)(iii) and revising the first three sentences of paragraph (h)(2) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(c) * * *

(2) * * *

(iii) If in connection with the most recent annual audit report pursuant to § 240.17a–5, the independent accountant commented on any material inadequacies in accordance with paragraphs (g) and (h) of this section, and § 240.17a–11(e), there shall be a statement by the broker or dealer that a copy of such report and comments is currently available for the customer's inspection at the principal office of the Commission in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business; and

* * * * *

(h) * * *

(2) If, during the course of the audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or as otherwise defined in paragraph (g)(3) of this section, then the independent public accountant shall call it to the attention of the chief financial officer of the broker or dealer, who shall have a responsibility to inform the Commission and the designated examining authority by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a–11 (e) and (g). The broker or dealer shall also furnish the accountant with a copy of said notice to the Commission by telegram or facsimile within said 24 hour period. If the accountant fails to receive such notice from the broker or dealer within said 24 hour period, or if the accountant disagrees with the statements contained in the notice of the broker or dealer, the accountant shall have a responsibility to inform the Commission and the designated examining authority by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a–11(g). * * *

* * * * *

4. By revising § 240.17a–11 to read as follows:

§ 240.17a–11 Notification provisions for brokers and dealers.

(a) This section shall apply to every broker or dealer registered with the Commission pursuant to section 15 of the Act.

(b) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3–1 shall give notice of such deficiency that same day in accordance with paragraph (g) of this section. The notice shall specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of § 240.15c3–1 and the broker or dealer has not given notice of the capital deficiency under this § 240.17a–11, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3–1, shall give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(c) Every broker or dealer shall send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (c)(1), (c)(2) or

(c)(3) of this section in accordance with paragraph (g) of this section:

(1) If a computation made by a broker or dealer subject to the aggregate indebtedness standard of § 240.15c3–1 shows that its aggregate indebtedness is in excess of 1,200 percent of its net capital; or

(2) If a computation made by a broker or dealer, which has elected the alternative standard of § 240.15c3–1, shows that its net capital is less than 5 percent of aggregate debit items computed in accordance with § 240.15c3–3a Exhibit A: Formula for Determination Reserve Requirement of Brokers and Dealers under § 240.15c3–3; or

(3) If a computation made by a broker or dealer pursuant to § 240.15c3–1 shows that its total net capital is less than 120 percent of the broker or dealer's required minimum net capital.

(d) Every broker or dealer who fails to make and keep current the books and records required by § 240.17a–3, shall give notice of this fact that same day in accordance with paragraph (g) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer shall also transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) Whenever any broker or dealer discovers, or is notified by an independent public accountant, pursuant to § 240.17a–5(h)(2) of the existence of any material inadequacy as defined in § 240.17a–5(g), the broker or dealer shall:

(1) Give notice, in accordance with paragraph (g) of this section, of the material inadequacy within 24 hours of such discovery or notification; and

(2) Transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(f) Every national securities exchange or national securities association that learns that a member broker or dealer has failed to send notice or transmit a report as required by paragraphs (b), (c), (d), or (e) of this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of this section.

(g) Every notice or report required to be given or transmitted by this section shall be given or transmitted to the principal office of the Commission in Washington, D.C., the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the designated examining authority of which such broker or dealer is a member, and the Commodity Futures Trading Commission if the broker or dealer is registered as a futures commission merchant with such Commission. For the purposes of this section, "notice" shall be given or transmitted by telegraphic notice or facsimile transmission. The report required by paragraphs (d) or (e)(2) of this section may be transmitted by overnight delivery.

(h) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in § 240.15c3–1(a)(6)(iv)(B), § 240.15c3–1(a)(6)(v), § 240.15c3–1(a)(7)(iv), § 240.15c3–1(c)(2)(x)(B)(*1*), § 240.15c3–1(c)(2)(x)(F)(*3*), § 240.15c3–1(e), § 240.15c3–1d(c)(2), § 240.15c3–3(i) and § 240.17a–5(h)(2).

Dated: July 7, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16480 Filed 7–12–93; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FL–044–5614; FRL–4655–3]

40 CFR Part 52

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the Volatile Organic Compound (VOC) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the Florida State Implementation Plan (SIP) to include the VOC Capture Efficiency Test Procedures rule to the Florida Administrative Code, Chapter 17–2. These revisions were submitted to EPA on January 15, 1992, in response to the May 1988 SIP call for areas in Florida which were not achieving the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the section 182(a)(2)(A) of the Clean Air Act requirement for States to correct their Reasonably Available Control Technology (RACT) rules. The revisions approved today correct the remaining deficiencies identified by EPA in Florida's VOC SIP, including all the submittals required under section 182(a)(2)(A) of the Act. Details regarding each revision being approved are discussed in the Supplementary Information section of this document.

EFFECTIVE DATE: This action will be effective September 13, 1993 unless notice is received by August 12, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Attn: Jerry Kurtzweg, ANR 443, 401 M Street, SW., Washington DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron of the EPA Region IV, Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA notified the Governor of Florida that areas of the State had failed to attain the NAAQS for ozone. Since the EPA approved attainment date of December 31, 1987, had passed, the Florida SIP was declared substantially inadequate to achieve the NAAQS for ozone. EPA requested that Florida respond to the SIP call in two phases. The Phase I response was due approximately one year following issuance of the SIP call. A Phase II response would have been due at a date specified following issuance of final EPA policy program requirements for ozone and CO non-attainment areas. However, the requirements and schedule for the Phase II SIP call are now provided in the Clean Air Act as amended in 1990. On June 15, 1989, August 24, 1990, and October 24, 1991, the Florida Environmental Regulation Commission approved the revisions to the Florida VOC regulations. The Florida Department of Environmental Regulation submitted these revisions of the Florida VOC regulation to EPA on August 16, 1989, August 27, 1990, and January 15, 1992. Florida requested that the revisions be adopted as part of the federally approved SIP. EPA approved the revisions submitted on August 16, 1989, and August 27, 1990, in an October 17, 1991, **Federal Register** notice (see 56 FR 51982). With this SIP revision the State of Florida has fulfilled