

Commodity Futures Trading Commission

§ 11.2

of law. Similarly, in settling a civil proceeding with a defendant the Commission invites the federal court to make conclusions of law and, in some instances, findings of fact. The Commission does not believe it would be appropriate for it to be making or inviting a court to make such uncontested findings of violations if the party against whom the findings and conclusions are to be entered is continuing to deny the alleged misconduct.

The refusal of a settling respondent or defendant to admit the allegations in a Commission-instituted complaint or the findings of fact or conclusions of law in the settlement order entered by the Commission or a court shall be treated as a denial, unless the party states that he or she neither admits nor denies the allegations or the findings and conclusions. In that event, the proposed offer of settlement, consent or consent order must include a provision stating that, by neither admitting nor denying the allegations, findings or conclusions, the settling respondent or defendant agrees that neither he or she nor any of his or her agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the complaint or findings or conclusions in the order, or creating, or tending to create, the impression that the complaint or the order is without a factual basis; provided, however, that nothing in this provision shall affect the settling respondent's or defendant's—

- i. Testimonial obligation, or
- ii. Right to take legal positions in other proceedings to which the Commission is not a party.

[64 FR 30903, June 9, 1999]

PART 11—RULES RELATING TO INVESTIGATIONS

Sec.

- 11.1 Scope and applicability of rules.
- 11.2 Authority to conduct investigations.
- 11.3 Confidentiality of investigations.
- 11.4 Subpoenas.
- 11.5 Transcripts.
- 11.6 Oath; false statements.
- 11.7 Rights of witnesses.
- 11.8 Sequestration.

APPENDIX A TO PART 11—INFORMAL PROCEDURE RELATING TO THE RECOMMENDATION OF ENFORCEMENT PROCEEDINGS

AUTHORITY: 7 U.S.C. 4a(j), 9 and 15, 12, 12a(5), 12(f).

SOURCE: 41 FR 29799, July 19, 1976, unless otherwise noted.

§ 11.1 Scope and applicability of rules.

The rules of this part apply to investigatory proceedings conducted by the Commission or its staff pursuant to sections 6(c) and 8 and 12(f) of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 15 and 12 and 16(f) (Supp. IV, 1974), to determine whether there have been violations of that Act, or the rules, regulations or orders adopted thereunder, or, in accordance with the provisions of section 12(f) of the Act, whether there have been violations of the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an application for designation or registration under the Act should be denied. Except as otherwise specified herein, the rules will apply to the conduct of investigation whether or not the Commission has authorized the use of subpoenas in the particular matter to compel the production of evidence.

[63 FR 5233, Feb. 2, 1998]

§ 11.2 Authority to conduct investigations.

(a) The Director of the Division of Enforcement and members of the Commission staff acting pursuant to his authority and under his direction may conduct such investigations as he deems appropriate to determine whether any persons have violated, are violating, or are about to violate the provisions of the Commodity Exchange Act, as amended, or the rules, regulations or orders adopted by the Commission pursuant to that Act, or, in accordance with the provisions of section 12(f) of the Act, whether any persons have violated, are violating or are about to violate the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an applicant for registration or designation meets the requisite statutory criteria. For this purpose, the Director may obtain evidence through voluntary statements and submissions, through exercise of inspection powers over boards of trade, reporting traders, and persons required by law to register with the Commission, or when authorized by order of the Commission,