

## § 171.10

party himself is authorized by the Commission, or unless pursuant to §171.8 the person authorized is changed by the party upon due notice to all other parties. Parties shall file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(e) *Service of orders and decisions.* A copy of all notices, rulings, opinions and orders of the Commission shall be served on each of the parties by the Proceedings Clerk. Service will be deemed complete upon deposit in the mail.

### § 171.10 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part shall be made by a written motion, filed with the Proceedings Clerk. The motion shall state the relief sought, basis for the relief and the authority relied upon.

(b) *Answers to motions.* Unless otherwise provided, a party may file a written response to a motion within five days after service of the motion.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter shall not be permitted.

### § 171.11 Sanctions.

In the event a party fails to fulfill his obligations under these Rules, the Commission may impose appropriate sanctions including dismissal of the appeal or summary reversal of the decision under appeal. Sanctions may be imposed on the motion of a party or on the Commission's own motion.

### § 171.12 Settlement.

At any time before the Commission has reached a final determination in a proceeding, the parties may request dismissal of the appeal based on a settlement agreement. If, in its view, the settlement is consistent with the pub-

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lic interest, the Commission will dismiss the proceeding.

### § 171.13 Practice before the Commission.

(a) *Practice—(1) By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in a proceeding subject to these rules. The Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal from representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw may be subject to conditions including submission of an affidavit averring that the party represented has actual knowledge of the withdrawal and providing the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se*. If the party proceeds *pro se*, the statement shall include the address where the party can thereafter be served.

### § 171.14 Waiver of rules.

To prevent undue hardship on any party or for other good cause shown, the Commission may waive any rule in this part in a particular case and may

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order proceedings in accordance with its direction. Such an order shall be based upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

### Subpart B—Notice and Effective Date of Final Decisions in Disciplinary, Membership Denial and Registration Actions

#### § 171.20 [Reserved]

#### § 171.21 Notice of final decision.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceedings Clerk and the Secretary of the Commission, with a written notice of any final decision in a disciplinary action, membership denial action or registration action subject to these rules. The notice may be contained in the written decision issued by the National Futures Association.

(b) *Content of the notice.* At a minimum, the notice shall provide the following information:

(1) The names of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.28 as well as their right to seek a stay of the effective date of the decision pursuant to § 171.27.

(4) For a disciplinary action:

(i) A statement setting forth the relevant acts of practices engaged in or omitted by the parties to the proceeding;

(ii) A statement setting forth the specific rule or rules of the association violated by the relevant acts or practices or omissions to act of the parties to the proceeding;

(iii) A statement setting forth the penalty imposed and the basis for its imposition.

(5) For a membership action:

(i) The specific grounds for the denial, bar, expulsion, or restriction;

(ii) The findings made concerning those grounds;

(iii) An explanation of the result reached in light of the grounds for ineligibility found and the findings made.

(6) For a registration action:

(i) The statutory disqualification at issue;

(ii) The findings made concerning the statutory disqualification;

(iii) An explanation of the result reached in light of the statutory disqualification shown and the findings made.

(c) *Effect of inadequate notice.* (1) If the National Futures Association issues a notice of a final decision subject to these rules that is not substantially consistent with the requirements of this section, and the record does not establish that the errors therein are harmless, the notice may be stricken. The Commission may act on its own motion or on the motion of a party.

(2) When a notice is struck, the final decision of the National Futures Association shall not be effective until a proper notice is served.

#### § 171.22 Effective date of final decisions in disciplinary, membership denial and registration actions.

(a) *General rule.* A final decision of the National Futures Association in a disciplinary action, membership denial action or registration action shall be effective thirty days after service of the notice described in § 171.21.

(b) *Petitions for stay pending review or for an emergency effective date—*(1) *Stay pending review.* Within ten days of service of the notice described in § 171.21, any aggrieved party may seek from the Commission a stay pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay. If the Commission does not grant the petition prior to the effective date of the decision under review, it shall be deemed denied. All petitions for stay must be accompanied by a notice of appeal.

(2) *Emergency effective date.* Within ten days of service of the notice described in § 171.21, the National Futures