

### § 171.3

### 17 CFR Ch. I (4-1-06 Edition)

Proceedings for status reports or for an interpretation of these rules.

(d) *Final Decision* means the decision that terminates the proceeding before the National Futures Association on the action that is the subject of the notice of appeal filed with the Commission.

(e) To *mail* means to place in the United States mail (or to deliver to an overnight delivery service of established reliability) a properly addressed and post-paid document. Unless otherwise provided, documents filed and served by mail must be sent by no less expeditious means than first class United States mail.

(f) *Member* includes any person admitted to membership by the National Futures Association.

(g) *Member Responsibility Action* includes any action in which, based on a finding by the National Futures Association that there is reason to believe that summary action is necessary to protect the commodity futures markets, customers or other members of the association, a member or person associated with a member may be summarily suspended from membership or association with a member, required to restrict operations or otherwise directed to take remedial action.

(h) *Membership denial action* includes any proceeding brought by the National Futures Association to (1) determine whether an applicant should be admitted to membership or be permitted to be associated with a member, (2) determine whether an applicant should be admitted to membership or be permitted to be associated with a member on a conditional basis, or (3) determine whether to revoke or restrict the membership or association status of any person who is a member or is associated with a member.

(i) *Party* includes any person who has been the subject of a disciplinary action, membership denial action, or registration action by the National Futures Association; the National Futures Association itself; any person granted permission to participate as a party pursuant to §171.27 of these rules; and any Division of the Commission that files a Notice of Appearance pursuant to §171.28 of these rules.

(j) *Person associated with a member* includes any person permitted to register as an associate of a member by the National Futures Association.

(k) *Record of the proceeding* shall include the order appealed from, the findings or report on which the order is based, the pleadings, evidence and proceedings before the National Futures Association decisionmaker and a copy of any rule of the National Futures Association that is material to the order.

(l) *Registration action* includes any proceeding brought by the National Futures Association, pursuant to authority delegated by the Commission, to grant, condition, deny, suspend, restrict, or revoke the registration of any person.

(m) *Rule of the National Futures Association* includes any article of incorporation, bylaw, rule, regulation, resolution or written interpretation of stated policy of the National Futures Association.

#### § 171.3 Business address; hours.

The principal office of the Commission is located at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC.

[55 FR 41068, Oct. 9, 1990, as amended at 60 FR 49336, Sept. 25, 1995]

#### § 171.4 Computation of time.

(a) *In general.* In computing any period of time prescribed by these rules or allowed by the Commission, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday. In the latter circumstances, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the period of time prescribed or allowed is less than seven (7) days.

(b) *Date of service of orders.* In computing any period of time involving the

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date of service of an order, the date of service shall be the date the order is mailed or hand delivered by the Proceedings Clerk, which, unless otherwise indicated, shall be the date stamped on the order by the Proceedings Clerk.

### § 171.5 Extension of time.

(a) *In general.* Except as otherwise provided by these rules, for good cause shown, on its own motion or the motion of a party, the Commission may at any time extend or shorten the time prescribed by the rules for filing any document. In any instance in which a specific time period is not prescribed in this part for an action to be taken concerning any matter, the Commission may establish a time for that action.

(b) *Filing of motion.* Absent extraordinary circumstances, when the time period that has been prescribed for an action to be taken concerning any matter exceeds seven days, requests for extension of that time period shall be filed at least five days prior to the expiration of the time period provided and shall include an explanation of the facts and circumstances that justify the extension.

### § 171.6 Ex parte communications.

(a) *Prohibition of ex parte communications.* (1) No party to a proceeding before the Commission under these rules and no person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of the proceeding subject to these rules to a Commissioner, member of the personal staff of a Commissioner or Commission decisional employee.

(2) No Commissioner, member of the personal staff of a Commissioner or Commission decisional employee shall make or knowingly cause to be made to a party to a proceeding subject to these rules or to any person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding, an *ex parte* communi-

tion relevant to the merits of the proceeding subject to these rules.

(b) *Procedure for handling.* Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who receives, or who makes or knowingly causes to be made, an *ex parte* communication prohibited by paragraph (a) of this section shall:

(1) Place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(2) Promptly give written notice of such communications and responses thereto to all parties to the proceedings to which the communication or responses relate.

(c) *Sanctions.* (1) Upon receipt of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of the prohibition contained in paragraph (a)(1) of this section, the Commission may, to the extent consistent with the interests of justice and the policies of the Act, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who knowingly makes or knowingly causes to be made, or who knowingly solicits or knowingly causes the solicitation of, an *ex parte* communication which violates the prohibitions contained in paragraph (a)(2) of this section may be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735-3(b)(3).

(d) *Applicability of prohibitions and sanctions against ex parte communications.* (1)(i) The prohibitions of this section shall begin to apply at the time that a copy of a notice of appeal has been filed with the Proceedings Clerk in accordance with § 171.23 or § 171.44 of this part; or a petition for stay or for an emergency effective date has been