

§ 171.40

17 CFR Ch. I (4–1–07 Edition)

(b) *Membership denial actions.* In reviewing a final decision of the National Futures Association in a membership denial action, the Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

- (1) The proceedings were not conducted in a manner consistent with fundamental fairness;
- (2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;
- (3) The weight of the evidence does not support the findings made or adopted in the final decision;
- (4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

(c) *Registration actions.* In reviewing a decision of the National Futures Association in a registration action, the Commission shall affirm the order of the National Futures Association unless the Commission finds that:

- (1) The proceedings were not conducted in a manner consistent with fundamental fairness;
- (2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;
- (3) The weight of the evidence does not support the findings made or adopted in the final decision;
- (4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

Subpart D—Commission Review of Decisions by the National Futures Association In Member Responsibility Actions

§ 171.40 Notice of the commencement of a member responsibility action.

The notice of a Member Responsibility Action provided by the National Futures Association pursuant to its rules shall advise the affected parties of their right to petition the Commission pursuant to § 171.41 to stay the effective date of the action pending a hearing before the National Futures Association on the factual issues relevant to the suspension, restriction or remedial action ordered.

§ 171.41 Petition for a stay of effective date of a member responsibility action pending a hearing by the National Futures Association.

(a) *Time to file.* Within ten days after the National Futures Association serves the notice required by § 171.40, any party aggrieved by the National Futures Association's determination that the member responsibility action should be effective prior to the opportunity for a hearing on the factual issues relevant to the suspension, restriction or remedial action imposed may petition the Commission to stay its effectiveness pending completion of further proceedings by the National Futures Association. The burden of persuasion shall rest with the party seeking the stay.

(b) *Content.* A petition for stay shall meet the content requirements set forth in § 171.22(b)(3).

(c) *Response.* A response may be filed by the National Futures Association in accordance with § 171.22(b)(4).

(d) *Standards for granting petition for stay.* In reviewing petitions to stay the effectiveness of the member responsibility action pending completion of further proceedings, the Commission shall consider:

- (1) Whether, in the circumstances presented, the notice and opportunity for a hearing provided by the National Futures Association are consistent with principles of fundamental fairness; and
- (2) The likelihood that the denial of the petition would result in irreparable harm to petitioner; and
- (3) The effect a grant of the petition would have on the interests of the National Futures Association; and
- (4) The effect a grant or denial of the petition would have on the public interest.

(e) If the suspension, restriction or remedial action imposed by the National Futures Association in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the action is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the