operations—14 CFR part 255—will expire on March 31, 1999, unless the Department readopts them or changes the rules' termination date to a later date. 62 FR 66272, December 18, 1997. We published an advance notice of proposed rulemaking to begin a proceeding for reexamining the rules and determining whether they should be readopted and, if so, whether they should be changed. 62 FR 47606, September 10, 1997. Under our modified schedule, the reply comments are due January 23 (the comments were due December 9). 62 FR 58700, October 30, 1997.

American Airlines, the principal owner of Sabre, the largest system and a major user of every system's services, has asked us to change the due date for reply comments to February 3, 1998 (as requested by our staff, American served its request on every commenter, so that all parties will be aware of its request). American notes that many comments were filed in response to our advance notice, that those comments raised a number of complex issues, and that some parties did not file their comments until well after the due date for comments. American contends that an extension of time for the reply comments is needed to ensure that all interested persons have a reasonable opportunity to review the initial comments and to prepare their reply comments. We intend to complete our rulemaking as soon as reasonably possible, given the impact of computer reservations system practices on airline competition, the public's ability to obtain accurate and complete information on airline services, and the airline and travel agency businesses. We have nonetheless decided to grant the short extension requested by American. Many parties filed comments, and those comments dealt with a number of difficult issues. We are likely to have a better record for preparing a notice of proposed rulemaking if we enable the parties to prepare reply comments that discuss in depth all of the issues. We will therefore extend the due date for reply comments to February 3.

Issued in Washington, D.C. on January 16, 1998.

Nancy E. McFadden,

General Counsel.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: On May 3, 1996, the Commodity Futures Trading Commission (''Commission'') published for comment in the **Federal Register** a proposed new Regulation 1.69 [1] that would implement the statutory directives of Section 5a(a)(17) of the Commodity Exchange Act (''CEA'') as it was amended by Section 217 of the Futures Trading Practices Act of 1992 (''FTPA'').[2] The Commission received eleven comment letters in response to the proposed rulemaking. Based upon those comments, the Commission has amended its proposed rulemaking and has determined to publish a revised proposed rulemaking for additional public comment.

Proposed Commission Regulation 1.69 would require self-regulatory organizations (''SRO'') to adopt rules prohibiting governing board, disciplinary committee, and oversight panel members from deliberating or voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. The proposed rulemaking also would amend Commission Regulations 1.41 and 1.63 to make modifications made necessary by proposed Commission Regulation 1.69.

DATES: Comments on the proposed rule and rule amendments must be received by February 23, 1998.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; Telephone: (202) 418–5481.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 217 of the FTPA amended Section 5a(a)(17) of the CEA to require that contract markets ''provide for the avoidance of conflict of interest in deliberations by [their] governing board[s] and any disciplinary and oversight committee[s].'' [3] On May 3, 1996, the Commission published for public comment in the **Federal Register** a proposed new Regulation 1.69 which required SROs to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating and voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome.[4] The Commission also proposed to make related amendments to existing Commission Regulations 1.3, 1.41 and 1.63.

II. Comments Received

The Commission received eleven comment letters in response to its proposed rulemaking. The comment letters were submitted by six futures exchanges (the Chicago Board of Trade (''CBT''), the Chicago Mercantile Exchange (''CME''), the Coffee, Sugar & Cocoa Exchange, Inc. (''CSC''), the Kansas City Board of Trade (''KCBT''), the New York Cotton Exchange (''NYCE''), and the New York Mercantile Exchange (''NYMEX'')); two futures clearing organizations (the Board of Trade Clearing Corporation (''BOTCC'') and the Commodity Futures Clearing Corporation of New York (''CFCCNY'')); two futures trade associations (the Equity Owners' Association of the CME (''EOA'') and the Futures Industry Association (''FIA'')); and a registered futures association (''RFA'') (the National Futures Association (''NFA'')).

The Commission has reviewed these comments carefully and has decided to issue for public comment re-proposed versions of Regulation 1.69 and amended Regulations 1.41 and 1.63 with modifications from the originally-proposed versions. The following section of this release analyzes the Commission's rulemaking. Each provision of the Commission's originally-proposed rulemaking is described along with a discussion of comments which were made on that particular provision, an indication of how the provision has been amended in

[1] 61 FR 19869 (May 3, 1996).

[2] Pub. L. No. 102–546, § 217, 106 Stat. 3590 (1992).

[3] For the purposes of this release, the term *committee* generally will be used to include governing boards, disciplinary committees and oversight panels unless otherwise specified. This proposed rulemaking's definitions of governing board, disciplinary committee, oversight panel and SRO are discussed below in Section III.A.

[4] 61 FR 19869 (May 3, 1996). In that same **Federal Register** release, the Commission also published for public comment a proposed new Regulation 156.4 which required contract markets to make more readily available to the public the identity of members of broker associations at their respective exchanges. The Commission adopted Regulation 156.4, with minor modifications, on August 2, 1996. 61 FR 41496 (August 9, 1996).

this proposed rulemaking, and an explanation of the Commission's rationale for amending the provision.[5]

A. Reason for Rulemaking

The Commission notes that in addition to comments on particular provisions, there also were several general comments on the originally-proposed rulemaking. The BOTCC, CBT and CFCCNY each commented that no provision of CEA Section 5a(a)(17) requires that the Commission adopt a conflict of interest regulation other than Section 5a(a)(17)(C)'s requirement that the Commission establish conditions under which committee members required to abstain from voting on significant actions in which they have a substantial financial interest may nevertheless participate in deliberations. The NYCE similarly commented that Regulation 1.69 should be confined to the areas specified by CEA Section 5a(a)(17) and that, instead of a Commission rulemaking, SRO committees should only have to follow the traditional ''bad faith'' standard when determining conflicts of interest.[6]

The commenters are correct in stating that paragraph (C) of Section 5a(a)(17) is the only provision that requires Commission rulemaking. The other provisions require SRO rules. Such rules, however, must be submitted for Commission review pursuant to either CEA Section 5a(a)(12)(A), in the case of contract markets, and CEA Section 17(j), in the case of registered futures associations. The Commission believes, therefore, that it is appropriate to establish by rulemaking the standards with which such SRO rules must conform.

While proposed Regulation 1.69 would implement the provisions of CEA Section 5a(a)(17), the proposed rulemaking also would give content to the ''bad faith'' standard traditionally applied to futures exchange governing boards.[7] By establishing specific factors to be considered with respect to barring persons with potential financial or personal interests from deliberating and voting on committee decisions, the Commission believes that proposed Regulation 1.69 would reduce the potential for collateral attack of such committee decisions on the grounds that they were made in ''bad faith.'' The Commission has structured proposed Regulation 1.69 to provide guidance to SROs, consistent with the new provisions of the CEA, on what type of circumstances could be the basis for ''bad faith'' challenges.

The BOTCC commented that the SROs, not the Commission, should adopt procedures to address conflict of interest situations. The Commission notes that, while proposed Regulation 1.69 would establish minimum standards for conflict of interest restrictions, the SROs would have a large degree of discretion when they formulated their required implementing rules to adopt the procedures that were most compatible with their committees' structures and practices.

B. Enforcement of SRO Implementing Rules

The EOA commented that it believes that recently the SROs have often ignored their written and unwritten standards regarding participation in governance and committee matters. The Commission's proposed rulemaking would address this concern to the extent that it would require SROs to codify their conflict of interest standards consistent with Regulation 1.69. The Commission reminds the SROs that they would be required to enforce any such implementing rules pursuant to Section 5a(a)(8) of the CEA and that SRO enforcement of such rules would be monitored by the Commission as part of its ongoing rule enforcement review program.[8]

C. Other Related Regulatory Provisions

The CBT commented that Regulation 1.69, as originally proposed, was inconsistent with Regulations 1.41(f)[9] and 8.17(a)(1).[10] The CBT did not specify how these provisions were inconsistent with originally-proposed Regulation 1.69. While Regulation 1.69 pertains to some of the same subject matter areas covered by Regulations 1.41(f) and 8.17(a)(1), the Commission believes that proposed Regulation 1.69's requirements would not conflict with any aspect of these provisions. In fact, proposed Regulation 1.69(b)(2)(iii), which lists the types of positions that SROs must review when determining the existence of a conflict of interest, is based upon the position information which contract markets already are required to gather and to provide to the Commission upon the adoption of temporary emergency rules, pursuant to Regulation 1.41(f)(3)(ii). In the case of Regulation 8.17(a)(1), proposed Regulation 1.69 merely would clarify the requirements of that provision by enumerating what constituted a ''financial, personal or other direct interest'' in a disciplinary committee matter.

III. Proposed Rulemaking

A. Definitions

1. Self-Regulatory Organization

i. *Application to Clearing Organizations*

The Commission originally proposed to apply Regulation 1.69's conflict of interest restrictions to the governing board, disciplinary committees and oversight panels of each SRO. Originally-proposed Regulation 1.69(a)(6)'s definition of SRO included contract markets, clearing organizations and RFAs. While Section 217 of the FTPA specifies that ''contract markets'' must adopt conflict of interest provisions, the Commission indicated in its originally-proposed rulemaking that it believed that it would be appropriate for Regulation 1.69's conflict of interest restrictions to extend to clearing organizations and RFAs as well. The Commission particularly sought comment on the definition of SRO and whether it would be consistent with the principles endorsed by CEA Section 5a(a)(17) to extend the conflict of interest restrictions to clearing organizations and RFAs.

[5] For ease of reference, this release will henceforth refer to the rulemaking published on May 3, 1996, as the originally-proposed rulemaking. The release will refer to the currently-proposed rulemaking version as the proposed rulemaking.

[6] The governing boards of futures exchanges are legally bound not to act in ''bad faith'' when taking actions on behalf of an exchange. This ''bad faith'' standard was first articulated in *Daniel* v. *Board of Trade of the City of Chicago,* 164 F. 2d 815 (7th Cir. 1947), a case arising from CBT emergency actions raising the price limits on various grain futures contracts due to price volatility. The plaintiffs in that case lost money on their grain positions as a result of the CBT's actions and claimed that the CBT's Board members acted ''willfully, maliciously, and for their own personal gain'' in imposing emergency price limits. *Id.* at 818. In the *Daniel* case, the Court recognized that while exchange boards have a ''duty'' to address market emergencies, they also have a ''relation to the public'' which requires that they ''act with the utmost objectivity, impartiality, honesty, and good faith.'' *Id.* at 819–20. In order to prevail in a suit challenging an emergency action, the Court determined that the plaintiff must show ''bad faith amounting to fraud,'' since fraud would imply a board's breach of its public trust. *Id.* The ''bad faith'' standard governing exchange boards has been consistently followed and further refined by the Commission and the courts.

[7] *See* footnote 6 above.

[8] Should it ever become necessary, the Commission could enforce SRO rules implementing Regulation 1.69. For example, under CEA Section 8c(a)(1), the Commission can ''suspend, expel, or otherwise discipline'' an SRO committee member for violating an SRO Regulation 1.69-implementing rule should the subject SRO fail to take disciplinary action against such a committee member.

[9] Regulation 1.41(f) establishes procedures for SRO adoption of temporary emergency rules.

[10] Regulation 8.17(a)(1) prohibits a person from serving on a contract market disciplinary committee if ''he or any person or firm with which he is affiliated has a financial, personal or other direct interest in the matter under consideration.''

The FIA commented that it did not object to Regulation 1.69's requirements being applied to clearing organizations. The BOTCC and CFCCNY commented that CEA Section 5a(a)(17) only applies to contract markets and that, accordingly, Congress was clearly only referring to futures exchanges, not clearing organizations. The BOTCC and CFCCNY also commented that applying conflict of interest restrictions to exchanges alone would be consistent with the different natures of exchange and clearing organization actions. They stated that exchanges can take actions that are specifically designed to have a market impact and, thus, possibly affect the positions of board members (*e.g.*, ordering liquidation trading, changing delivery dates, etc.). The BOTCC and CFCCNY contended that clearing organizations do not generally regulate trading but instead take actions to maintain the financial integrity of the clearing system and, thus, do not take actions that directly affect the positions of particular board members.

The Commission notes that, while CEA Section 5a(a)(17) applies to ''contract markets,'' the provision also specifies that its conflict of interest restrictions shall apply to committees handling certain types of margin changes. Margin levels in the futures industry are established by both contract markets and clearing organizations. The Commission also notes that there have been previous occasions when CEA requirements for contract markets have been applied to clearing organizations. For example, Section 5a(a)(12)(A) of the CEA mandates Commission review of ''contract market'' rules, while Commission Regulation 1.41, which establishes procedures for Commission review of proposed rules, specifically includes clearing organizations within its definition of contract markets for these purposes. In addition, clearing organizations already are subject to regulatory requirements that are comparable to Regulation 1.69 such as Regulation 1.41(f)'s emergency action provisions and Regulation 1.63's prohibition on committee service by persons with disciplinary histories. Finally, some contract markets have in-house clearing organizations (*e.g.*, CME and NYMEX), while other contract markets are cleared by independent clearing organizations (*e.g.*, CBT and NYCE). Applying Regulation 1.69 to clearing organizations, as well as contract markets, would ensure that there would not be differing treatment of contract markets based on whether or not they had an in-house or independent clearing mechanism. For these reasons, the Commission has determined that it would be appropriate to treat clearing organizations as included in the definition of ''contract markets'' in CEA Section 5a(a)(17) and to make clearing organizations subject to proposed Regulation 1.69.

ii. *Application to RFAs*

The Commission also has decided to include RFAs within the definition of SRO in order to ensure that their committees would be subject to proposed Regulation 1.69. This would reduce the potential for committee member bias and self-interest in RFA proceedings as well.[11]

2. Governing Board

As originally proposed, Regulation 1.69's definition of governing board included any SRO ''board of directors, board of governors, board of managers, or similar body'' and any subcommittee thereof, such as an executive committee, that is authorized to take action on behalf of its SRO. The CBT commented that the Commission should confirm that a subcommittee of a governing board when not authorized to act on behalf of an SRO or when formulating recommendations to the board on a matter is neither a ''governing board'' nor an ''oversight panel'' under Regulation 1.69. The Commission believes that the recommendations of governing board subcommittees often are adopted in full by governing boards because the boards rely heavily on their subcommittees' recommendations. Accordingly, the Commission has revised the proposed rulemaking's definition of governing board to apply to SRO boards or board subcommittees that are authorized ''to take action or to recommend the taking of action'' on behalf of an SRO.

3. Disciplinary Committee

As originally proposed, Regulation 1.69 defined an SRO ''disciplinary committee'' to mean a body that was authorized by an SRO ''to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof.''

i. *Issuing Disciplinary Charges*

The CBT commented that the Commission should confirm that Regulation 1.69's disciplinary committee definition does not include committees that issue disciplinary charges. In fact, the Commission believes that disciplinary committee members with conflicts of interest can have a significant influence on the disciplinary process during the charging stage. Accordingly, the Commission has modified proposed Regulation 1.69 to include the issuance of disciplinary charges as one defining characteristic of a disciplinary committee.[12]

ii. *Minor Rule Violations*

The CBT, CME, FIA, NYCE and NYMEX each commented that Regulation 1.69's definition of disciplinary committee should exclude committees that deal with decorum and recordkeeping violations. The Commission agrees that the conflict of interest requirements need not apply to disciplinary committees that handle minor disciplinary matters but only to the extent that such matters are handled in a summary manner. Accordingly, the Commission has revised final Regulation 1.69(a)(1)'s definition of ''disciplinary committee'' to exclude committees that ''summarily impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.'' [13] This revision, which incorporates elements of Commission Regulation 8.27's summary disciplinary provision, is only intended to create an exclusion for committees that handle minor disciplinary matters where it is important to impose sanctions in a prompt manner.

iii. *Committees Versus Committee Members*

In its originally-proposed rulemaking release, the Commission sought particular comment on the aspect of the definition of disciplinary committee under which the conflict of interest restrictions applied to members of disciplinary committees when they deliberated and voted on matters as a body, but did not apply to members of disciplinary committees when they exercised disciplinary powers individually. Thus, the originally-proposed definition did not include persons authorized to take disciplinary actions, such as floor committee

[11] In its comment letter, NFA did not object to the inclusion of RFA's in the definition of an SRO. NFA did request, however, that the definition be clarified with respect to the handling of conflict of interests due to a committee member's financial interest in a significant action. As explained in Section III.B.2.i.d. below, the proposed rulemaking has been revised in this regard.

[12] The Commission also has proposed a conforming amendment to Regulation 1.63's definition of disciplinary committee. *See* Section III.E. below for a description of proposed amended Regulation 1.63.

[13] Insofar as such types of rule violations are not dealt with in a summary manner, they would not be excluded under the proposed definition.

members, who dispose of minor disciplinary violations by individually issuing fines or penalties, but did apply in instances when more than one committee member was required to endorse such an action. No commenter addressed this issue.

The Commission has decided to revise proposed Regulation 1.69's disciplinary committee definition so that there would be no distinction between disciplinary matters that were handled by full committees and those handled by individual committee members. Instead, as discussed above, the Commission has determined to incorporate into the definition a functional exclusion for committees that summarily impose minor penalties for decorum, attire and certain recordkeeping violations. Thus, the disciplinary committee definition would apply to any entity with disciplinary authority, whether a single person or a body of persons.

4. Oversight Panel

In the originally-proposed rulemaking, the Commission defined ''oversight panel'' as an SRO committee authorized to ''review, recommend, or establish policies or procedures with respect to the [SRO's] surveillance, compliance, rule enforcement, or disciplinary responsibilities.'' [14] The CBT and NYCE commented that this definition was too broad and should not include committees which review or recommend policies as such a definition would deter people, inside and outside of the futures industry, from serving on task forces and planning committees that formulate ideas that are helpful to the SROs.

The Commission believes that SRO policies with respect to surveillance, compliance, rule enforcement and disciplinary responsibilities are an important part of the self-regulatory process and that persons who are entrusted with such responsibilities should be free from conflicts of interests.

The CBT and NYCE suggested that the definition of oversight panel be limited to panels that establish self-regulatory policies or procedures because they are the panels that adopt measures on behalf of their SROs. Presumably, the CBT and NYCE suggested excluding panels that review or recommend such policies or procedures because their actions may only be implemented upon adoption by some other authority, such as an SRO's governing board or membership. The Commission believes, however, that often the recommendation of an oversight panel with respect to self-regulatory policies or procedures can be tantamount to the establishment of such policies or procedures because the adopting authority relies on the panel's recommendation. Accordingly, the Commission has determined that the proposed rulemaking's definition of oversight panel should apply to SRO bodies that ''recommend or establish'' possible self-regulatory policies or procedures for an SRO, while excluding bodies that review such measures on behalf of their SRO.[15]

5. Family Relationship

As further discussed below, originally-proposed Regulation 1.69 prohibited committee members from deliberating and voting on committee matters in which any member of their immediate family was a named party in interest. For these purposes, originally-proposed Regulation 1.69 defined ''immediate family'' to mean a person's ''spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law.'' Although no commenters addressed the originally-proposed definition, the Commission has decided to modify the definition in two respects for this proposed rulemaking.

First, consistent with the terminology used in CEA Section 5a(a)(17), the Commission proposes to use the defined term ''family relationship'' instead of the originally-proposed ''immediate family.'' Second, the Commission has decided to amend the provision substantively by defining family relationship to mean a committee member's ''spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.'' The Commission believes that these levels of familial relations are sufficiently close that they could unduly influence a committee member's decisionmaking. Accordingly, the proposed definition should help to assure that committee decisions would be the result of fair deliberations and would not be tainted by the real or perceived self-interest of committee members.

6. Significant Actions

In the originally-proposed rulemaking, Regulation 1.69's conflict of interest restrictions were applied to SRO committees whenever they considered any ''significant action which would not be submitted to the Commission for its prior approval.'' The originally-proposed definition of that term included, at a minimum, two types of SRO actions: (1) SRO actions or rule changes that addressed emergencies as defined by Commission Regulation 1.41(a)(4) and (2) SRO margin changes that responded to extraordinary market conditions when such conditions were likely to have a substantial effect on prices in any contract traded or cleared at the SRO.

Proposed Regulation 1.69's definition of this term has been modified in several respects to accommodate suggestions made by commenters. In addition, for ease of reference, instead of ''significant action which would not be submitted to the Commission for its prior approval,'' proposed Regulation 1.69 uses the defined term ''significant action.'' The proposed ''significant action'' definition, though, continues to be limited to SRO actions which are not submitted to the Commission for prior approval.

i. *Scope of Definition*

Four commenters—the CBT, FIA, NYMEX and BOTCC—suggested that the significant action definition not be modified by the term ''at a minimum,'' as originally proposed. The commenters believed that the use of this modifier deprived SROs of notice of what actions would be deemed significant and could potentially subject some committee actions to second-guessing. The Commission agrees that the inclusion of this phrase could lead to distracting collateral attacks on the actions of committees that are not subject to the conflict of interest restrictions. Accordingly, proposed Regulation 1.69(a)(8)'s definition of significant action does not include the ''at a minimum'' modifier.

ii. *Nonphysical Emergency Rules*

The BOTCC, CBT and FIA commented that CEA Section 5a(a)(17) requires that conflict of interest requirements apply to SRO committees when they consider ''any nonphysical emergency rule,'' while proposed Regulation 1.69's definition included both physical and nonphysical emergency rules. These commenters urged the Commission to adhere to Congress' mandate and to limit the significant action definition to include only nonphysical emergencies. The Commission concurs with the commenters and has revised the proposed definition, which incorporates portions of Regulation 1.41(a)(4)'s definition of emergency, to include committee actions that respond to

[14] *See* originally-proposed Commission Regulation 1.3(tt).

[15] The oversight panel definition would be established by proposed Regulation 1.69(a)(4) and not by Regulation 1.3 as originally proposed.

nonphysical emergencies (*see* Regulations 1.41(a)(4)(i) through (iv) and (vi) through (viii)) and to exclude committee actions that respond to physical emergencies (*see* Regulation 1.41(a)(4)(v)).

iii. *Types of Margin Changes*

The CME commented that Regulation 1.69's significant action definition should include margin changes that are used for regulatory purposes. In addition, the CBT, CME, FIA and NYMEX commented that, instead of margin changes that respond to market conditions that are likely to have a substantial effect on contract prices, the significant action definition should only include margin changes that are likely to have a substantial effect on contract prices. The commenters contended that their suggested approach would more closely conform with CEA Section 5a(a)(17).[16]

The Commission believes that the decisionmaking ability of committee members is most likely to be influenced by their personal interests when they consider actions which could impact them monetarily. Accordingly, the definition of significant action should focus on committee actions which have the most potential for affecting prices in particular contracts. Consistent with that rationale, the Commission has decided to include aspects of both of the above suggestions in its proposed rulemaking. Thus, proposed Regulation 1.69(a)(8)(ii)'s definition of an SRO significant action includes changes in margin levels that: (1) are designed to respond to extraordinary market conditions such as actual or attempted corners, squeezes, congestion, or undue concentrations of positions or (2) are likely to have a substantial effect on prices in any contract traded or cleared at the SRO.

The NYCE suggested that the Commission modify its significant action definition to pertain to margin changes that respond to price changes that are greater than some pre-established, one-day percentage market move. The Commission believes that such an approach could be an acceptable way of defining SRO committee significant actions that should be subject to Regulation 1.69's conflict of interest requirements. The Commission is not prepared, however, to establish a quantifiable industry-wide standard as part of this proposed rulemaking. The Commission believes that it would be difficult to establish such a standard at this time given the wide variety of types of SROs and futures contracts that exist. Instead, the Commission in its proposed rulemaking has adopted a ''significant action'' definition that would address the requirements explicitly set forth in CEA Section 5a(a)(17), but that, at the same time, would give each SRO the flexibility to adopt implementing measures that would be sensitive to the circumstances of its particular markets.

In its originally-proposed rulemaking, the Commission sought comment on whether there were any other types of SRO actions or rule changes that should be subject to Regulation 1.69's requirement. As examples, the Commission asked whether ''changes to a price quote on a price change register, setting modified closing call ranges, or establishing settlement prices'' should be included in Regulation 1.69's significant action definition.[17] The CBT, CME and NYMEX opposed classifying price change register revisions as significant actions, while the CBT and CME similarly opposed the inclusion of the establishment of modified closing call ranges and settlement prices. Generally, the commenters felt that subjecting such actions to conflict of interest requirements would be a cumbersome burden for SRO committees that carry out these functions. Accordingly, the Commission has decided not to revise proposed Regulation 1.69's significant action definition in this regard.

B. Self-Regulatory Organization Rules

1. Relationship With a Named Party in Interest

i. *Nature of Relationship*

Originally-proposed Regulation 1.69(b)(1) mandated that SROs implement rules requiring that committee members abstain from deliberating and voting on any matter in which they had a significant relationship with the matter's ''named party in interest.'' [18] Originally-proposed Regulation 1.69(b)(1) listed the types of relationships between a committee member and named party in interest that required abstention, including family, employment, broker association and ''significant, ongoing business'' relationships. Several commenters suggested ways in which the Commission could clarify the types of relationships that would be the grounds for an abstention.

a. *Clearing Relationships.*—The CME, FIA and NFA commented that SRO committee members should not be required to abstain from committee matters if they use the same clearing member as a matter's named party in interest. The Commission agrees that sharing a clearing member should not, by itself, influence a committee member's decisionmaking. Accordingly, proposed Regulation 1.69(b)(1)(i)(D) explicitly provides that such a relationship shall not require a committee member to abstain from a matter.

The CBT commented that relationships between a clearing firm's employees or principals and the SRO members who are cleared by the firm should not be considered a ''significant, ongoing business relationship'' under Regulation 1.69(b)(1). The Commission believes that two parties to such a clearing relationship may not always be totally impartial if one party is involved in considering an SRO committee action that directly bears upon the other, especially in instances where a cleared member constitutes a significant portion of a firm's clearing activity. Accordingly, the Commission has decided not to exclude such relationships from proposed Regulation 1.69(b)(1)(i).

b. *Specificity of Relationship Standard.*—The Commission also received two general comments on originally-proposed Regulation 1.69(b)(1) from the CME and NYCE. The CME stated that the provision went too far in specifying the details as to what constituted a significant relationship that required abstention. By contrast, the NYCE suggested that originally-proposed Regulation 1.69(b)(1) was not sufficiently detailed and should include an objective standard to identify disqualifying relationships based upon: (1) the length of the relationship and (2) the amount of monies that are earned by the parties as a result of the relationship.

In formulating proposed Regulation 1.69(b)(1)(i), the Commission has attempted to establish a categorical listing of the types of personal and business relations that have the potential to influence committee members unduly. SROs always would have the discretion, of course, to include any additional disqualifying criteria in their own implementing rules.

[16] CEA Section 5a(a)(17) states that the term ''significant action that would not be submitted to the Commission for its prior approval'' shall include ''any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect [sic] on prices in any contract traded on such contract market.''

[17] *See* 61 FR 19869, 19872 n. 12.

[18] For these purposes, originally-proposed Commission Regulation 1.69 defined a *named party in interest* as a ''party who is identified as the subject of any matter being considered'' by an SRO committee. This same definition has been used in this proposed rulemaking as Regulation 1.69(a)(6).

c. *Confidentiality of Proceedings.*—Under originally-proposed Regulation 1.69(b)(1), SROs were required to adopt rules prohibiting committee members from engaging in any type of deliberations or voting on matters where they had a significant relationship with the matter's named party in interest. The CBT noted that CEA Section 5a(a)(17) limits this requirement to ''confidential'' deliberations and voting. For this proposed rulemaking, the Commission would require that committee members abstain from any type of deliberation and voting on matters where they had a relationship with the named party in interest, whether the deliberation was confidential or non-confidential.

Theoretically, non-confidential committee meetings would permit outsiders to monitor the fairness of a committee's decisionmaking processes. The Commission does not believe, however, that it is likely that there would be an effective outside presence at such committee meetings given the SROs' traditional practice of closing committee meetings to the public. In addition, even open committee meetings would not prevent a committee member's decisionmaking from being influenced by self-interest, especially since the particulars of a committee member's personal interest in a matter might not be known to any outsiders attending committee meetings.

CEA Section 5a(a)(17) states that ''at a minimum'' the named party in interest conflict of interest restrictions shall apply to the ''confidential deliberations and voting'' of contract market governing boards, disciplinary committees and oversight panels. Because CEA Section 5a(a)(17) merely sets a minimum baseline as to the application of conflict of interest requirements, the Commission has decided to propose the more prophylactic approach of applying Regulation 1.69(b)(1)'s requirements to all deliberations, whether confidential or not. The Commission notes that this approach also is consistent with the existing conflict of interest requirements of Regulation 8.17(a)(1) which do not distinguish between confidential and non-confidential disciplinary committee proceedings.[19]

d. *Time Frame of Relationship.*—In addition, the Commission wishes to clarify that conflict of interest determinations under proposed Regulation 1.69(b)(1)(i) should be based upon circumstances at the time of a committee's consideration of a matter. Accordingly, if a committee member had some significant business relationship with a matter's named party in interest prior to, but not concurrent with, his or her committee's consideration of the matter, proposed Regulation 1.69(b)(1) would not prohibit the committee member from participating.[20] The Commission believes that this approach is most appropriate for two reasons. First, current relationships clearly have a greater potential influence on committee members' decisionmaking than past relationships. Second, if proposed Regulation 1.69's restrictions were based on past relationships it would vastly expand the administrative burden for SRO compliance with Regulation 1.69 and, thus, potentially could compromise the ability of SRO committees to dispose of matters in an expeditious manner.

e. *Non-Disciplinary Matters.* While the Commission anticipates that proposed Regulation 1.69(b)(1)'s restrictions usually would be applied to disciplinary cases because they always would involve named respondents, the Commission notes that the provision would pertain to any matter handled by an SRO governing board, disciplinary committee or oversight panel in which there was a particular named party in interest. Accordingly, the proposed conflicts restrictions would apply, for example, to such committees whenever they reviewed a membership application or considered some regulatory action with respect to a particular individual, such as directing a person to reduce his or her position in a contract. The Commission invites comment on whether the proposed named party in interest provision should be clarified to pertain to any other type of SRO committee action. For example, should committees be subject to Regulation 1.69(b)(1) when they revise price change registers or certify the late submission of pit cards in response to requests by particular members?

ii. *Disclosure of Relationship*

Originally-proposed Regulation 1.69 did not explicitly require that committee members inform their SRO whether they had a relationship with a matter's named party in interest. In order to help ensure that SROs are able to enforce their Regulation 1.69-implementing rules, proposed Regulation 1.69(b)(1)(ii) would require that SRO committee members disclose to the appropriate SRO staff whether he or she has any one of the relationships listed in Regulation 1.69(b)(1)(i) with respect to a matter's named party in interest.

iii. *Procedure for Determination*

a. *Sources of Information.*—Originally-proposed Regulation 1.69 did not explicitly address how SROs must enforce any rule prohibiting committee members from participating in matters where they had a relationship with the named party in interest. The CSC commented that the relationships enumerated in Regulation 1.69(b)(1), as originally proposed, would not generally be known to SRO staff when they attempted to enforce this prohibition. Accordingly, the CSC requested that the Commission clarify that SROs have no responsibility to discern relationships between committee members and named parties in interest that are not readily available from SRO records.

The Commission recognizes that SROs often do not have knowledge of all possible aspects of the relationships that may exist between a committee's members and named parties in matters being considered by the committee. Accordingly, proposed Commission Regulation 1.69(b)(1)(iii) establishes the SROs' responsibilities in this regard. Under this provision, SROs would be required, at a minimum, to base their conflict of interest determinations upon: (1) information provided by the committee members themselves (proposed Regulation 1.69(b)(1)(iii)(A)), and (2) any other source of information that was ''reasonably available'' to the SRO (proposed Regulation 1.69(b)(1)(iii)(B)).

Consistent with proposed Regulation 1.69(b)(1)(ii)'s requirement that committee members disclose any relationship with a matter's named party in interest, proposed Regulation 1.69(b)(1)(iii)(A) would require that SROs ascertain from each committee member whether his or her relationship with a matter's named party in interest fell into one of the ''conflict of interest'' categories listed in proposed Regulation 1.69(b)(1)(i) (A) through (E). Proposed Regulation 1.69 does not prescribe the manner in which SROs must gather this information from committee members. The Commission would expect SROs to engage each committee member directly in this regard, whether through oral questioning, a written questionnaire or some sort of committee member pledge, to determine any possible relationship

[19] *See* footnote 10 above.

[20] In addition, the Commission would view it as an improper circumvention of proposed Regulation 1.69 if a committee member were to drop out of a broker association, as that term is defined by Commission Regulation 156.1, or end a significant, ongoing business relationship simply in order to avoid having to abstain from a committee matter.

with a matter's named party in interest.[21]

Under proposed Regulation 1.69(b)(1)(ii)(B), SROs also would be required to consult any other source of information that was ''reasonably available'' to them before making a conflict of interest determination. The Commission believes that this standard appropriately accommodates the time and resource constraints that SROs often face when administering SRO committee matters.

b. *Responsibility for Determinations.*—The Commission notes that several commenters objected to originally-proposed Regulation 1.69's requirement that conflict of interest determinations be made by SRO staffs. The BOTCC and CBT commented that CEA Section 5a(a)(17) does not mandate who must make these decisions. The CSC and KCBT also contended that it may be difficult for SRO staff to direct committee members to abstain and that, accordingly, such determinations would be best made by the SRO committee involved.

Based upon these comments, the Commission has decided to revise proposed Regulation 1.69 so that it states only that SROs must make determinations as to the existence of conflicts of interest under Regulation 1.69, but does not identify any particular SRO personnel or committee that must make these determinations. This approach would enable each SRO to allocate the responsibility for these determinations as it saw fit, whether it be to SRO staff, the presiding committee, or some other party. The Commission would expect each SRO, however, to specify in its rules and procedures implementing Regulation 1.69 the person or group of persons who would have these responsibilities.

2. Financial Interest in a Significant Action

i. *Nature of Interest*

As originally proposed, Commission Regulation 1.69 required that SRO committee members abstain from committee deliberations and voting on certain matters in which they ''knowingly [had] a direct and substantial financial interest.'' This restriction would have applied whenever a committee considered significant actions that would not be submitted to the Commission for its prior approval.[22]

In determining a committee member's financial interest in a possible committee action, originally-proposed Regulation 1.69 required SROs to review certain positions held by the member, the member's immediate family, the member's firm and the customers of the member's firm in any contract that could be affected by the committee action. With respect to a committee member's personal positions, originally-proposed Regulation 1.69 specifically required that SROs consider gross positions held in the member's personal accounts, the member's Regulation 1.3(j) controlled accounts, and any accounts in which the member had a significant financial interest. With respect to the positions of the member's immediate family, Regulation 1.69, as originally proposed, required that SROs consider gross positions held in the personal accounts or Regulation 1.3(j) controlled accounts of the member's immediate family. With respect to customer positions, the originally-proposed version of Regulation 1.69 required that SROs consider gross positions held in proprietary accounts at the committee member's firm, net positions held in customer accounts at the member's firm, and gross positions held by any customers who constituted a significant proportion of business for the member's firm.

The Commission received a wide range of comments on the originally-proposed rulemaking's provisions regarding conflicts of interest due to financial interest in a significant action. Subject to the limits mandated by CEA Section 5a(a)(17) with respect to conflict of interest requirements, the Commission has attempted to incorporate into proposed Regulation 1.69 many of the suggestions made by the commenters.

a. *Committee Member Expertise*—The KCBT commented that under the Commission's original proposal, committee members who were actively involved with a contract on a daily basis likely would be the very same committee members who would have to abstain from participating in committee deliberations and voting on significant actions concerning such contracts. Thus, according to the KCBT, these committee members would have no input in deciding whether a significant action was in the best interests of the contract, and consequently such decisions would be left to persons who were less familiar with the contract. The Commission recognizes that this tension is inherent in the conflict of interest requirements imposed by CEA Section 5a(a)(17) and Regulation 1.69. To the extent possible, the Commission has attempted to alleviate this concern in the proposed rulemaking by permitting otherwise conflicted committee members to deliberate on matters when they, among other things, have ''unique or special expertise, knowledge or experience in the matter under consideration.''[23]

b. *Small Exchanges.*—The KCBT also commented that nearly all committee members at small exchanges have a substantial financial interest in the exchange's primary products. Thus, under originally-proposed Regulation 1.69, a high percentage of committee members at such exchanges would be disqualified from participating in significant actions concerning such contracts. The Commission understands that the requirements of Regulation 1.69 may be difficult for small exchanges to adhere to in this regard. As discussed below, however, proposed Regulation 1.69 would provide each SRO with some flexibility in formulating its implementing rules. Moreover, the Commission believes that the potential for this problem would be greatly reduced if the exchanges ensured that their committees represented a wide diversity of membership interests, including representatives from various trading pits, consistent with the composition requirements of Regulation 1.64.

c. *Position Size.*—As noted, while Commission Regulation 1.69, as originally proposed, required that committee members abstain from deliberating and voting on significant actions when they had a ''direct and substantial financial interest'' in the outcome of the matter, it did not set any specific standards as to what financial interest or position size warranted a member's abstention. Instead, the Commission originally proposed that each SRO adopt its own standards in this regard as part of its implementing rules and procedures.

[21] The Commission believes that this approach would be consistent with some of the SRO practices already in place to enforce SRO conflict of interest requirements. In the context of disciplinary matters, for example, the CME has each of its disciplinary committee members sign a pledge each year which explains the CME's conflict of interest requirements and requires committee members to withdraw from considering any committee matter that raises a conflict of interest for them. At NYMEX, staff explains the exchange's conflict of interest restrictions before each disciplinary committee meeting and then asks whether there are any disciplinary committee members who believe they could have a conflict in any of the upcoming matters.

[22] The definition of such significant actions is set forth in proposed Regulation 1.69(a)(8) and is discussed above in Section III.A.6.

[23] *See* proposed Commission Regulation 1.69(b)(3)(i)(B). *See also* Section III.B.3. below for a discussion of the conditions under which otherwise conflicted committee members would be permitted to participate in committee matters.

The NYCE commented that Regulation 1.69 should establish some objective threshold in this area based upon the potential financial loss or gain which a committee member could incur as a result of his or her committee's possible significant action. The CBT commented that SROs should have the discretion to decide when a committee member's financial interest in a matter was direct and substantial. The CME contended that the wide disparity in sizes among the exchanges and their contracts would make it difficult for a regulation to specify a particular position size that would constitute a ''direct and substantial financial interest.''

At the present time, the Commission has decided not to incorporate into proposed Regulation 1.69 any numerical thresholds as to what constitutes a committee member's direct and substantial financial interest in a significant action. Instead, the SROs could include standards in their implementing rules that were appropriate to their markets. Any such criteria should be premised on, among other things, the extent to which a committee member was exposed to market risk, the size of the member's positions, whether or not the positions were market neutral and, with respect to a member's affiliated firm, the potential effect on the firm's capital. In addition, the Commission would expect each SRO to assess the magnitude and probable market impact of the underlying significant action being considered by the SRO committee.

d. *Application to RFAs.*—The NFA commented that RFAs do not consider ''significant actions,'' as that term was defined by originally-proposed Regulation 1.69, and that, accordingly, RFAs should be excluded from Regulation 1.69's conflict of interest requirements with respect to SRO committees that handle significant actions. The Commission agrees that RFA committees do not take such significant actions and, accordingly, has revised proposed Regulation 1.69(a)(7)'s definition of SRO to exclude RFAs from the conflict of interest requirements in those instances.

ii. *Disclosure of Interest*

Under originally-proposed Commission Regulation 1.69, whenever an SRO committee considered a significant action, each member of the committee would have been required to disclose to the SRO's staff any position information that was known or should have been known by the member with respect to the positions listed in proposed Regulation 1.69(b)(2) (*i.e.*, positions held by the member, the member's family, the member's firm and certain customers of the member's firm). For the purposes of this provision, committee members were presumed to have knowledge with respect to certain of these positions.

a. *Presumption of Knowledge.*—The CBT, CME and FIA each commented that this presumption of knowledge provision would force a large number of committee members to abstain voluntarily from matters for fear that they would be presumed to have knowledge of position information. The CBT and CME contended that the provision should not be a part of any conflict of interest requirement because committee members who are not aware of their financial interest in a committee matter cannot be motivated by that interest. The CSC and FIA commented that the provision presumed committee member knowledge of position information that members might not know. Thus, the provision could have the consequence of creating conflicts of interest as it could force committee members to inquire about conflict-creating positions of which they otherwise would be ignorant. Each of these commenters recommended deleting the presumption of knowledge provision.

The Commission has revised proposed Regulation 1.69(b)(2)(ii) so that it does not presume committee member knowledge of any position information. Instead, a committee member would be required, under each SRO's Regulation 1.69-implementing rule, to disclose to the SRO relevant position information that was ''known to him or her.'' A failure to disclose any such information should be considered a violation of the SRO implementing rule. This approach would be consistent with proposed Regulation 1.69(b)(2)(i), which would prohibit committee members from participating in committee decisions where they ''knowingly [had] a direct and substantial financial interest in the result of the vote.''

iii. *Procedure for Determination*

As originally proposed, Commission Regulation 1.69 mandated procedures for SROs when they determined whether an SRO committee member should abstain from deliberations and voting on a significant action due to a conflict of interest. In ascertaining information relevant to a committee member's possible interest in such an action, the original proposal permitted SRO staff to rely upon:

(1) the most recent large trader reports and clearing records available to the staff;
(2) position information provided to the staff by the committee member; and
(3) any other source of position information which was readily available to the staff.

a. *Review of Positions.*—The BOTCC commented that assembling all of the position information required by originally-proposed Regulation 1.69 would impose significant, time-consuming burdens on SRO staffs. The CME suggested that the information-gathering requirement be limited to information that was reasonably available to the SRO.

The BOTCC, CSC and NYMEX commented that committees which undertake significant actions must act in a swift and decisive manner. They contended that the number of categories of positions to be reviewed by SROs in applying Regulation 1.69 to committees considering significant actions would be so extensive that it would cause substantial delays and, thus, hinder an SRO's ability to respond to emergencies promptly. The CBT recommended that given that some significant actions under originally-proposed Regulation 1.69 also are temporary emergency actions under Regulation 1.41(f),[24] the list of positions to be reviewed under Regulation 1.69 should be modified to follow the position review criteria already required by Regulation 1.41(f)(3)(v) and, thus, avoid creating different position review burdens for

[24] There would be some overlap between the bases for Regulation 1.41 temporary emergency rules and the bases for proposed Regulation 1.69 significant actions. Proposed Regulation 1.69 significant actions would include temporary emergency rules which address: (1) manipulative activity (Regulation 1.41(a)(4)(i)); (2) corners, congestion or undue concentrations of positions (Regulation 1.41(a)(4)(ii)); (3) circumstances which could materially affect the performance of contracts (Regulation 1.41(a)(4)(iii)); (4) any sovereign or exchange action which could have a direct impact on trading at the contract market (Regulation 1.41(a)((4)(iv)); (5) the bankruptcy of a member or a legal action which could affect the ability of a member to perform on its contracts (Regulation 1.41(a)(4)(vi)); (6) any circumstance where a member's condition jeopardizes the safety of customer funds, the contract market or the contract market's members (Regulation 1.41(a)(4)(vii)); and (7) any other unusual, unforeseeable and adverse circumstance for which it is not practicable for a contract market to submit a rule to the Commission for prior review (Regulation 1.41(a)(4)(viii)). Proposed Regulation 1.69 significant actions would diverge from Regulation 1.41 temporary emergency rules, however, by: (1) not including temporary emergency rules which address physical emergencies (Regulation 1.41(a)(4)(v)) and (2) including margin level changes which either respond to extraordinary market conditions or which are likely to have a substantial effect on contract prices.

significant actions and temporary emergency rules.[25]

Consistent with the CBT's suggestion, the Commission has modeled proposed Regulation 1.69(b)(2)(iii) list of positions to be reviewed for conflict of interest determinations after the list of positions that must be reviewed by exchanges when they adopt temporary emergency actions pursuant to Regulation 1.41(f)(3)(v). Accordingly, under proposed Regulation 1.69, whenever an SRO committee handled a significant action, the SRO would be required to consider the following types of positions in determining whether any of the committee's members had a direct and substantial financial interest in the matter:

(1) gross positions at that self-regulatory organization held in each committee member's personal accounts or Regulation 1.31(j) controlled accounts (proposed Regulation 1.69(b)(2)(iii)(A));
(2) gross positions at that self-regulatory organization held in Regulation 1.17(b)(3) proprietary accounts at each committee member's affiliated firm (proposed Regulation 1.69(b)(2)(iii)(B));
(3) gross positions at that self-regulatory organization held in accounts in which a committee member was a Regulation 3.1(a) principal (proposed Regulation 1.69(b)(2)(iii)(C)); and
(4) net positions at that self-regulatory organization held in Regulation 1.17(b)(2) customer accounts at each member's affiliated firm (proposed Regulation 1.69(b)(2)(iii)(D)).[26]

b. *Positions Outside of SRO.*—The CME commented that the list of positions to be reviewed under originally-proposed Regulation 1.69 could be interpreted to include positions at other exchanges, in over-the-counter derivatives and in the cash market. The CME believed that it was inappropriate to require an SRO to undertake the same level of review for positions acquired outside the SRO than for positions acquired at some other SRO. The Commission has revised proposed Regulation 1.69 to address conflicts of interest based upon positions held by an SRO committee member outside of his or her SRO. First, proposed Regulation 1.69(b)(2)(i) would explicitly require committee members to abstain from deliberations and voting on significant actions if the member had a ''direct and substantial financial interest'' in the matter based upon ''exchange or non-exchange positions that reasonably could be expected to be affected by the action.''

The Commission believes that any positions held by a committee member that can be impacted by a committee action, whether or not it is held at the member's home SRO, has the potential to influence the member's views on committee matters. Given that proposed Regulation 1.69 is intended to promote fairness and integrity in the SRO committee decisionmaking process, the Commission believes that it would be appropriate to include such positions as the possible basis for a conflict of interest determination.

The Commission also is aware that SROs may not have complete knowledge of their committee members' outside financial interests. To address this situation, proposed Regulation 1.69(b)(2)(iii)(E) states that in reviewing position information in the course of a conflict of interest determination, SROs should include a review of ''any other types of positions, whether maintained at that self-regulatory organization or elsewhere, that the self-regulatory organization reasonably expects could be affected by the significant action.'' By requiring that the SRO itself determine what positions it ''reasonably expects could be affected by the significant action,'' the Commission believes that this provision would provide SROs with the latitude necessary to decide what ''outside'' financial interests of an SRO committee member to consider when making conflict of interest determinations. Each SRO's responsibilities in this regard would be further circumscribed by only having to base conflict determinations on the limited sources of information specified in proposed Regulation 1.69(b)(2)(iv).[27]

iv. *Bases for Determination*

While the Commission in this proposed rulemaking has not modified the sources of information that SROs should consult when making conflict of interest determinations, proposed Regulation 1.69(b)(2)(iv) now provides that, when making such determinations, an SRO may take ''into consideration the exigency of the significant action.'' The Commission believes that this modification would provide SROs with the flexibility to make conflict decisions in an expeditious manner that would not prevent SRO committees from promptly handling significant actions.[28]

3. Participation in Deliberations

CEA Section 5a(a)(17) recognizes that in some instances a committee member with a conflict in a particular committee matter also might have special knowledge or experience regarding that matter. Accordingly, in a limited number of circumstances, originally-proposed Commission Regulation 1.69 permitted SRO committees to allow a committee member who otherwise would be required to abstain from deliberations and voting on a matter because of a conflict to deliberate but not vote on the matter. This ''deliberation exception'' was only made applicable to matters in which a committee member had a ''direct and substantial financial interest'' in the result of a vote on a significant action. Consistent with CEA Section 5a(a)(17), originally-proposed Regulation 1.69's deliberation exception did not apply to matters in which a committee member had a conflict due to his or her relationship with a matter's named party in interest.

In determining whether to permit a ''conflicted'' committee member to deliberate on a matter, originally-proposed Regulation 1.69 required that the presiding committee consider a number of factors including: (1) Whether the member had special expertise in the matter involved that few or no other members of the committee had; (2) whether the committee's ability to meaningfully deliberate would be adversely affected by the member's non-participation; and (3) whether the

[25] Whenever a contract market implements a temporary emergency rule, Regulation 1.41(f)(3) requires that it submit various information to the Commission with respect to the action. Among other things, the exchange must provide the Commission ''a summary of any disclosure by a [board member] of his or her positions in any subject contract market, including disclosure of positions held in any personal account, controlled account, other account in which [the member] has an interest, and customer and proprietary accounts at [the member's] affiliated firm.''

[26] There would be one minor variation between the lists of positions that must be reviewed in conflict of interest and temporary emergency rule situations. Prior to the adoption of temporary emergency rules, Regulation 1.41(f)(3)(v) requires that exchanges review ''gross positions held in any * * * other account [beside personal or controlled accounts] in which the governing board member has an interest.'' For the purposes of conflict of interest determinations, the Commission has determined, under proposed Regulation 1.69(b)(2)(iii)(C), to limit this aspect of position review to gross positions held in accounts in which a committee member is a Regulation 3.1(a) principal. Thus, the proposed provision includes positions in which committee members would probably have the greatest economic interest.

[27] In this connection, the Commission plans to have its staff determine whether it would be feasible to provide each SRO with access to position information maintained by the Commission with respect to positions held by an SRO's committee members at other SROs.

[28] SRO committees should not abuse this provision by delaying the consideration of significant actions in order to create exigent circumstances which would lessen the SRO's information-gathering responsibilities. The Commission would particularly evaluate the SROs' application of this provision in any rule enforcement review of Regulation 1.69-implementing rules.

member's participation in deliberations would be necessary for the committee to obtain a quorum.[29]

The Commission has decided to retain a ''deliberation exception'' provision in this proposed rulemaking, but it has modified Regulation 1.69 to simplify the factors that should be considered in making such a determination. The Commission believes that this proposed provision strikes a balance between ensuring that SRO committees make well-informed decisions and minimizing the influence of a committee member's potential bias or self-interest in a matter. In this respect, the Commission has incorporated some of the suggestions made by several of the commenters on Regulation 1.69 as originally proposed.

i. *Diversity of Membership Interests*

The CBT and CSC suggested that the diversity of membership interests represented on a committee should be included as a factor in deciding whether to allow an otherwise conflicted committee member to participate in deliberations. The Commission recognizes that promoting the diversity of SRO committees is an important regulatory goal, as exemplified by Regulation 1.64.[30] The Commission believes, however, that ensuring fair and objective committees, free of the influence of self-interest, is of paramount importance. Accordingly, the Commission does not believe that it would be beneficial to include committee diversity as a factor when making deliberation exception decisions. The Commission also does not believe that it is necessary to amend Regulation 1.64 to accommodate Regulation 1.69's conflict of interest requirements. While Regulation 1.64(b) establishes composition requirements for SRO governing boards, the provision pertains to the ''regular voting members'' of a board and not to the composition of a board each time that it meets. Thus, for instance, an SRO whose governing board consists of ten percent or more commercial interest directors will not be in violation of Regulation 1.64(b)(1) if, when considering any particular board matter, such directors comprise less than ten percent of the presiding directors because some or all of them are not present for any reason, including abstentions due to conflicts of interest.

ii. *Committee Member Expertise*

The CSC commented that two of the deliberation exception factors listed in originally-proposed Commission Regulation 1.69 seemed to overlap. The CSC commented that a committee with a member with special expertise in a particular subject[31] always would be affected adversely[32] if the member was required to abstain from deliberations on matters involving the subject. In response, the Commission has revised proposed Regulation 1.69(b)(3)(ii)(B) to require that committees in granting a deliberation exception must consider whether the conflicted committee member has ''unique or special expertise, knowledge or experience'' in the subject matter of the significant action.[33]

iii. *Disclosure of Positions*

The CBT, CSC and NYCE commented that under Regulation 1.69 as originally proposed a committee member with a conflict of interest could participate in deliberations on a matter without disclosing his or her positions, and concomitant biases, to the other committee members. The Commission agrees that the disclosure of a committee member's interest in a matter should help to mitigate any prejudicial influence such member's views could have on other committee members during the course of deliberations.

Proposed Commission Regulation 1.69(b)(3)(iii) would require that, whenever an SRO committee determined whether to grant a deliberation exception to a committee member, the committee must consider all of the position information which served as the basis for the member's conflict of interest in the matter.[34] This requirement would serve two purposes. First, it would ensure that the committee would be fully apprised of the nature of the committee member's conflict when it made its deliberation exception determination. Second, as suggested by the CBT, CSC and NYCE, the provision also would ensure that, should a committee member with a conflict of interest be allowed to deliberate, his or her fellow committee members should be aware of the member's interest in the matter and could appropriately evaluate the views expressed by such member during deliberations.

iv. *Public Member Approval*

In order to promote a ''neutral'' determination, originally-proposed Regulation 1.69 required that any deliberation exception must be approved by all ''public'' members of the presiding committee (*i.e.*, committee members who were not members of the SRO) who were present when the committee made such a determination.[35]

The CBT and CME commented that requiring that deliberation exceptions be approved by each public representative on an SRO committee would have the un-democratic effect of giving a single committee member the power to veto another committee member's participation in deliberations. The two exchanges urged the Commission to delete this requirement. Based on these comments, the Commission has decided to delete the provision from proposed Regulation 1.69.

[29] The Commission, in its originally-proposed rulemaking, indicated that it believed that, given the factors that must be considered, deliberation exception determinations should be made by the committee involved, rather than SRO staff. For any particular SRO committee matter, the committee members themselves would be in a better position than SRO staff to assess their individual levels of expertise in the matter and their need for input during deliberations from the committee member who otherwise would be required to abstain. The Commission continues to adhere to this view, although no commenters on the originally-proposed rulemaking addressed this issue. Accordingly, proposed Regulation 1.69 specifically confers the responsibility for deliberation exception determinations on the SRO committee involved.

[30] Commission Regulation 1.64 establishes composition standards for certain types of SRO committees, including governing boards. Regulation 1.64 requires that boards meaningfully represent the following general membership interest groups: (1) futures commission merchants; (2) floor traders; (3) floor brokers; (4) participants in a variety of trading pits; and (5) other market users and participants such as banks and pension funds. In addition, Regulation 1.64 requires that at least ten percent of the regular voting members of each SRO board must consist of directors representing commercial interests such as producers, consumers, processors, distributors and merchandisers of commodities underlying the SRO's futures products, and that at least twenty percent of the regular voting members of each board must consist of non-member representatives (*i.e.*, persons who are not members of the SRO and are knowledgeable about either the futures markets or financial regulation).

[31] *See* originally-proposed Commission Regulation 1.69(b)(4)(i)(A).

[32] *See* originally-proposed Commission Regulation 1.69(b)(4)(i)(B).

[33] In applying this proposed provision, a conflicted committee member should not be considered to have ''unique or special expertise, knowledge or experience'' in a particular subject matter if the member's expertise, knowledge or experience was similar to that of some other non-conflicted member of the same committee.

[34] This information would include not only the position information supplied to the SRO by the committee member (proposed Regulation 1.69(b)(2)(iv)(B)), but also position information garnered by the SRO from large trader reports and clearing records (proposed Regulation 1.69(b)(2)(iv)(A)) and any other sources reasonably available to the SRO (proposed Regulation 1.69(b)(2)(iv)(C)).

[35] This requirement did not apply to SRO governing boards, disciplinary committees or oversight committees which do not have public members. *See* Commission Regulations 1.64(b) and (c) which respectively require governing boards and disciplinary committees in certain circumstances to include non-SRO member representatives.

v. *Abstention Procedures*

Two other commenters asked the Commission to clarify certain aspects of Regulation 1.69's deliberation exception provision. The CSC asked whether a person who was permitted to deliberate but not vote on a matter would be required to leave the committee meeting for any vote on the matter. As part of this proposed rulemaking, the Commission wishes to make clear that a committee member who was required to abstain from any committee matter due to a conflict of interest under proposed Regulation 1.69, whether it be deliberation or voting, must leave the committee meeting prior to such deliberation and/or voting. The Commission believes that even the silent presence of a committee member could influence a committee to the extent that it impeded free and open discourse among the other members of a committee.

vi. *Public Member Conflicts of Interest*

The CBT questioned whether a public representative to an SRO committee who has a possible conflict of interest could participate in determining whether he or she should receive a deliberation exception under Regulation 1.69. The Commission stresses that, under proposed Regulation 1.69, an SRO committee member, whether public or non-public, could not participate in any committee vote on whether he or she should abstain from voting and/or deliberating on a matter due to a conflict of interest.

vii. *Public Interest*

The Commission emphasizes that proposed Regulation 1.69(b)(3)(ii)'s list of circumstances would merely be the factors to be considered by SROs when making deliberation exception decisions and the presence or absence of any one factor should not be dispositive in making such decisions. Consistent with CEA Section 5a(a)(17)(c), SROs ultimately could only permit committee members with conflicts to participate in deliberations if it would be ''consistent with the public interest.''

4. Documentation of Determination

Whenever an SRO made a conflict of interest determination, originally-proposed Regulation 1.69 required the SRO committee considering the underlying substantive matter to include certain information regarding the determination in the minutes of its meeting. Such a record was required to indicate: (1) the committee members who attended the meeting, (2) the staff member(s) who reviewed the committee members' positions, (3) a listing of the position information reviewed for each committee member, (4) the names of any committee members directed to abstain and the reasons therefor, (5) a description of the procedures followed by the SRO in making an abstention decision, and (6) in those instances when a committee member was granted a deliberation exception, a full description of the views expressed by the member during the committee's deliberations.

i. *Documenting Position Information*

Several commenters responded to the original proposal's documentation requirements. The CBT and CME suggested that the provision be modified to make clear that confidential information, such as position information, need not be disclosed in a committee meeting's minutes. The Commission has revised proposed Regulation 1.69(b)(4) to require that SRO committees ''reflect in their minutes or otherwise document'' their conflict of interest determinations. With this approach, SRO committees would not be required to disclose position information in their minutes. However, they would have to document any position information and any other information relied upon in making a conflict of interest determination and would be required to retain such information in a manner consistent with Commission Regulation 1.31.

ii. *Views of Conflicted Members*

The CBT commented that the originally-proposed requirement that committee minutes reflect the views expressed by ''conflicted'' members who were granted deliberation exceptions was counterproductive and would inhibit such members from candidly expressing their opinions and sharing their expertise. The Commission disagrees. The recordation of such committee members' views should help to deter them from offering strictly self-interested opinions to their fellow committee members. The Commission notes, however, that it has attempted to reduce the burden of this provision in this proposed rulemaking by requiring that SROs record only ''a *general* description of the views expressed by such member during deliberations.'' *See* proposed Commission Regulation 1.69(b)(4)(iv) (emphasis added).

iii. *Determination Procedures*

The CME commented that a description of the procedures used in making a conflict of interest determination should only have to be included in a committee's minutes when the procedures vary from the SRO's normal procedures. The Commission has decided to delete this provision in its entirety from proposed Regulation 1.69.

iv. *Relationship With Named Party in Interest*

The Commission stresses that, while many of proposed Regulation 1.69(b)(4)'s requirements would apply only to conflicts of interest where a committee member had a ''direct and substantial financial interest'' in a significant action, the provision also would pertain to conflicts due to a member's relationship with a matter's named party in interest. Accordingly, in named party in interest conflicts, the presiding committee would be required to record: (1) the names of committee members who participated in deliberation and voting on a matter in which a member abstained due to a conflict of interest (proposed Regulation 1.69(b)(4)(i)) and (2) the names of any committee members who recused themselves voluntarily or who were required to abstain due to a conflict of interest (proposed Regulation 1.69(b)(4)(ii)). The documentation requirements of proposed Regulation 1.69(b)(4) (i) and (ii) would only be appropriate for financial interest conflicts of interests and would not be applicable to named party in interest conflicts.

C. Violations of SRO Rules

Originally-proposed Commission Regulation 1.69(d) made it a violation of Regulation 1.69 for an SRO to permit a committee member to participate in deliberations or voting on a matter if such participation violated any SRO rule implementing the conflict of interest restrictions of Commission Regulation 1.69.

The CBT commented that this provision would not increase any SRO's incentive to comply with Regulation 1.69's standards and that, accordingly, the benefits of the provision did not justify the costs to the Commission of enforcing the provision. The FIA commented that the requirement was redundant and only gave the impression that SROs cannot be entrusted to regulate their own affairs. Both the CBT and FIA recommended that the provision be deleted.

The Commission has decided not to include this provision in proposed Regulation 1.69. The Commission reminds the SROs, however, that they would have the responsibility, under Section 5a(a)(8) of the CEA, to enforce any ''bylaws, rules, regulations, and resolutions'' implementing proposed Regulation 1.69. The Commission

believes that it would be able to monitor adequately the SROs' enforcement of their implementing rules in the ordinary course of its rule enforcement review program.

D. Liability to Other Parties

As originally proposed, Commission Regulation 1.69(e) protected SROs, SRO officials and SRO staffs involved in reviewing committee member positions and making abstention decisions, pursuant to Regulation 1.69, from liability for such actions to any party other than the Commission. The CBT, CSC and FIA each suggested that the Commission revise the wording of this provision so that it more closely conformed with the wording of CEA Section 5a(a)(17). Rather than proposing a regulatory provision in addition to the statutory provision in this regard, the Commission has decided to delete this provision from this proposed rulemaking. The Commission believes that this approach would eliminate any confusion between Regulation 1.69 and CEA Section 5a(a)(17).

E. Amendments to Other Commission Regulations Made Necessary by Final Commission Regulation 1.69

Section 213 of the FTPA amended Section 5a(a)(12)(B) of the CEA to require that the Commission issue regulations establishing ''terms and conditions'' under which contract markets may take temporary emergency actions without prior Commission approval. Section 5a(a)(12)(B) and Regulation 1.41(f), the Commission's implementing regulation, require that any such temporary emergency action be adopted by a two-thirds vote of a contract market's governing board. In recognition of the fact that governing board members may be required to abstain from deliberations and voting on such actions under contract market rules implementing Regulation 1.69, the Commission, as part of its conflict of interest rulemaking, originally proposed to amend Regulation 1.41(f) to provide that such abstaining board members not be included in determining whether a temporary emergency action has been approved by a two-thirds majority of a governing board.

The CBT in its comment letter requested that the Commission confirm that SROs would be able to include governing board members who abstain from voting on temporary emergency rules, pursuant to a Regulation 1.69-implementing rule, in determining whether the board has a quorum of members necessary for it to conclude business. In this proposed rulemaking, the Commission would revise Regulation 1.41(f)(10) to provide that such abstaining members may be included for quorum purposes.

As indicated in Section III.A.3. above, the Commission also has proposed to revise Commission Regulation 1.63's definition of disciplinary committee so that, like proposed Regulation 1.69's definition of the same term, it would include the issuance of disciplinary charges as a defining characteristic.[36] Regulation 1.63's disciplinary committee definition would include all committees and persons with disciplinary authority and, unlike proposed Regulation 1.69, would not exclude persons who summarily impose penalties for minor rule violations.

F. Conclusion

The Commission believes that proposed Regulation 1.69 and the proposed amendments to Regulations 1.41 and 1.63 would meet the statutory directives of Section 5a(a)(17) of the CEA as it was amended by Section 217 of the FTPA. The proposed rulemaking would establish guidelines and factors to be considered in determining whether an SRO committee member was subject to a conflict of interest which could potentially restrict his or her ability to make fair and impartial decisions in a matter and, thus, warranted abstention from participation in committee deliberations and voting.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the Regulatory Flexibility Act. 47 FR 18618, 18619 (April 30, 1982). Furthermore, the then Chairman of the Commission previously has certified on behalf of the Commission that comparable rules affecting clearing organizations and registered futures associations did not have a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986).

This proposed rulemaking would affect individuals who served on SRO governing boards, disciplinary committees and oversight panels. The Commission believes that this proposed rulemaking would not have a significant economic impact on these SRO committee members. This proposed rulemaking would require these committee members to disclose to their SROs certain information which was known to them at the time that their committees considered certain types of matters. The Commission believes that this requirement would not have any significant economic impact on such members because the information which they would be required to provide should be readily available to them.

Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the action proposed to be taken herein would not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities

When publishing proposed rules, the Paperwork Reduction Act of 1995 (''PRA'') (Pub. L. 104–13 (May 13, 1995)) 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, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget (''OMB''). The burden associated with this entire collection (3038–0022), including this proposed rule, is as follows:

Average burden hours per response—3,547.01

Number of respondents—11,011.00

Frequency of response—On Occasion

[36] Regulation 1.63 requires that persons with certain disciplinary histories be disqualified from serving on, among other things, SRO disciplinary committees.

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

Average burden hours per response—2.00

Number of respondents—20

Frequency of response—On Occasion

Persons wishing to comment on the information required by this proposed rule should contact the Desk Officer, Commodity Futures Trading Commission, OMB, Room 10201, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the Commission Clearance Office, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, 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 is proposing to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 would continue to read as follows:

Authority: 7 U.S.C. 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(f)(10) would be proposed to be added to read as follows:

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

* * * * *

(f) * * *

(10) Governing board members who abstain from voting on a temporary emergency rule pursuant to § 1.69 shall not be counted in determining whether such a rule was approved by the two-thirds vote required by this section. Such members can be counted for the purpose of determining whether a quorum exists.

* * * * *

3. Section 1.63(a)(2) would be proposed to be revised 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 committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof.

* * * * *

4. Section 1.69 would be proposed to be added to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

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

(1) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, 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 cases where a single person is authorized to summarily impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.

(2) A person's *family relationship* means the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) *Governing board* means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a)(12)(A) or 17(j) of the Act, to take action or to recommend the taking of action on behalf of the self-regulatory organization.

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

(5) *Member's affiliated firm* is a firm in which the member is a ''principal,'' as defined in § 3.1(a), or an employee.

(6) *Named party in interest* means a party who is the subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

(7) *Self-regulatory organization* means a ''self-regulatory organization'' as defined in § 1.3(ee) and includes a ''clearing organization'' as defined in § 1.3(d), but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

(8) *Significant action* includes any of the following types of self-regulatory organization actions or rule changes that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an ''emergency'' as defined in § 1.41(a)(4) (i) through (iv) and (vi) through (viii); and

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at such self-regulatory organization.

(b) *Self-regulatory organization rules.* Each self-regulatory organization shall maintain in effect rules that 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, to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Such rules must provide for the following:

(1) *Relationship with named party in interest.*—(i) *Nature of relationship.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(A) Is the named party in interest;

(B) Is an employer, employee, or fellow employee of the named party in interest;

(C) Is associated with the named party in interest through a ''broker association'' as defined in § 156.1;

(D) Has any other significant, ongoing business relationship with the named party in interest, not including relationships limited to executing futures or option transactions opposite each other or to clearing futures or option transactions through the same clearing member; or

(E) Has a family relationship with the named party in interest.

(ii) *Disclosure of relationship.* Prior to the consideration of any matter involving a named party in interest, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff whether he or she has one of the relationships listed in paragraph (b)(1)(i) of this section with the named party in interest.

(iii) *Procedure for determination.* Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest. Such determinations shall be based upon:

(A) Information provided by the member pursuant to paragraph (b)(1)(ii) of this section; and

(B) Any other source of information that is reasonably available to the self-regulatory organization.

(2) *Financial interest in a significant action*—(i) *Nature of interest.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that reasonably could be expected to be affected by the action.

(ii) *Disclosure of interest.* Prior to the consideration of any significant action, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff the position information referred to in paragraph (b)(2)(iii) of this section that is known to him or her.

(iii) *Procedure for determination.* Each self regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of:

(A) Gross positions held at that self-regulatory organization in the member's personal accounts or ''controlled accounts,'' as defined in § 1.3(j);

(B) Gross positions held at that self-regulatory organization in proprietary accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(C) Gross positions held at that self-regulatory organization in accounts in which the member is a principal, as defined in § 3.1(a);

(D) Net positions held at that self-regulatory organization in ''customer'' accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and

(E) Any other types of positions, whether maintained at that self-regulatory organization or elsewhere, that the self-regulatory organization reasonably expects could be affected by the significant action.

(iv) *Bases for determination.* Taking into consideration the exigency of the significant action, such determinations should be based upon:

(A) The most recent large trader reports and clearing records available to the self-regulatory organization;

(B) Position information provided by the member pursuant to paragraph (b)(2)(ii) of this section; and

(C) Any other source of information that is reasonably available to the self-regulatory organization.

(3) *Participation in deliberations.* (i) Under the rules required by this section, a self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain pursuant to paragraph (b)(2) of this section if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.

(ii) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the deliberating body should consider the following factors:

(A) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(B) Whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

(iii) Prior to any determination pursuant to paragraph (b)(3)(i) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and financial interest in the result of a vote on a significant action pursuant to paragraph (b)(2) of this section.

(4) *Documentation of determination.* Self-regulatory organization governing boards, disciplinary committees, and oversight panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(i) The names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) The name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated;

(iii) Information on the position information that was reviewed for each member; and

(iv) In those instances when a committee member who otherwise would be required to abstain from deliberating and voting on a matter is permitted to deliberate on a significant action, a general description of the views expressed by such member during deliberations.

Issued in Washington, D.C. on January 16, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

Proposed Amendments to Rules of Practice and Procedure; Hearing Regarding Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: On October 23, 1997, the Commission published proposed rules to establish procedures for the conduct of five-year reviews of antidumping and countervailing duty orders and suspension agreements (62 FR 55185). The notice of proposed rulemaking indicated that the Commission would hold a hearing concerning the procedural matters discussed in the notice of proposed rulemaking as well as methodological and analytical issues relating to five-year reviews. The hearing will include panel discussions on topics of significant interest. Interested persons with similar viewpoints are encouraged to consolidate testimony. After reviewing the requests, the Commission will notify participants of panel assignments and time allocations. The Commission will