

§ 1.64

17 CFR Ch. I (4–1–23 Edition)

(3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(i) A finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,

(ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

(4) Currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act;

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(c) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b) (1) through (6) of this section.

(d) Each self-regulatory organization shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (a)(6)(i) of this section and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. Each self-regulatory organization must maintain and keep current the schedule required by this section, and post the schedule on the self-regulatory organization's Web site so that it is in a

public place designed to provide notice to members and otherwise ensure its availability to the general public.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels or governing board pursuant to the requirements of this regulation during the prior year.

(f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels, oversight panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either section 17(h)(1) of the Act or Commission regulation 9.11.

[55 FR 7890, Mar. 6, 1990, as amended at 58 FR 37653, July 13, 1993; 64 FR 23, Jan. 4, 1999; 77 FR 66331, Nov. 2, 2012; 83 FR 7995, Feb. 23, 2018; 85 FR 4850, Jan. 27, 2020]

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees.

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

(1) *Self-regulatory organization* means "self-regulatory organization," as defined in § 1.3.

(2) *Major disciplinary committee* means a committee of persons who are authorized by a self-regulatory organization to conduct disciplinary hearings, 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 which:

(i) Are related to:
(A) Decorum or attire,
(B) Financial requirements, or
(C) Reporting or recordkeeping; and,
(ii) Do not involve fraud, deceit or conversion.

(3) *Regular voting member of a governing board* means any person who is

Commodity Futures Trading Commission

§ 1.64

eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board.

(4) *Membership interest* (i) In the case of a contract market, each of the following will be considered a different membership interest:

- (A) Floor brokers,
- (B) Floor traders,
- (C) Futures commission merchants,
- (D) Producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,
- (E) Participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,
- (F) Other market users or participants; except that with respect to paragraph (c)(2) of this section, a contract market may define membership interests according to the different pits or principal groups of commodities traded on the contract market.

(ii) In the case of a registered futures association, each of the following will be considered a different membership interest:

- (A) Futures commission merchants,
- (B) Introducing brokers,
- (C) Commodity pool operators,
- (D) Commodity trading advisors; and,
- (E) Associated persons, except that under paragraph (c)(3) of this section an associated person will be deemed to represent the same membership interest as its sponsor.

(b) Each self-regulatory organization must maintain in effect standards and procedures with respect to its governing board which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That twenty percent or more of the regular voting members of the board are persons who:

(i) Are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to governing board deliberations; and,

(ii)(A) Are not members of the self-regulatory organization,

(B) Are not currently salaried employees of the self-regulatory organization,

(C) Are not primarily performing services for the self-regulatory organization in a capacity other than as a member of the self-regulatory organization's governing board, or

(D) Are not officers, principals or employees of a firm which holds a membership at the self-regulatory organization either in its own name or through an employee on behalf of the firm;

(2) In the case of a contract market, that ten percent or more of the regular voting members of the governing board be comprised where applicable of persons representing farmers, producers, merchants or exporters of principal commodities underlying a commodity futures or commodity option traded on the contract market; and

(3) That the board's membership includes a diversity of membership interests. The self-regulatory organization must be able to demonstrate that the board membership fairly represents the diversity of interests at such self-regulatory organization and is otherwise consistent with this regulation's composition requirements;

(c) Each self-regulatory organization must maintain in effect rules with respect to its major disciplinary committees which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That at least one member of each major disciplinary committee or hearing panel thereof be a person who is not a member of the self-regulatory organization whenever such committee or panel is acting with respect to a disciplinary action in which:

(i) The subject of the action is a member of the self-regulatory organization's:

- (A) Governing board, or
- (B) Major disciplinary committee; or,
- (ii) Any of the charged, alleged or adjudicated contract market rule violations involve:

(A) Manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract, or

§ 1.65

17 CFR Ch. I (4-1-23 Edition)

(B) Conduct which directly results in financial harm to a non-member of the contract market;

(2) In the case of a contract market, that more than fifty percent of each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered;

(3) In the case of a registered futures association, that each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and,

(4) That each major disciplinary committee or hearing panel thereof include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's responsibilities.

(d) Each self-regulatory organization must submit to the Commission within thirty days after each governing board election a list of the governing board's members, the membership interests they represent and how the composition of the governing board otherwise meets the requirements of §1.64(b) and the self-regulatory organization's implementing standards and procedures.

[58 FR 37654, July 13, 1993; 59 FR 5082, Feb. 3, 1994, as amended at 83 FR 7995, Feb. 23, 2018; 85 FR 4850, Jan. 27, 2020]

§ 1.65 Notice of bulk transfers and disclosure obligations to customers.

(a) *Notice and Disclosure to Customers.*

(1) Prior to transferring a customer account to another futures commission merchant or introducing broker other than at the request of the customer, a futures commission merchant or introducing broker must obtain the customer's specific consent to the transfer.

(2) If the customer account agreement contains a valid consent by the customer to prospective transfers of the account, the transferor futures commission merchant or introducing broker may transfer the account if the customer is provided with written notice of, and a reasonable opportunity to object to, the transfer and the customer has not asserted an objection to

the transfer or given other instructions as to the disposition of the account. The notice to the customer must include:

(i) A clear statement of the reason(s) for the transfer, the name, address and telephone number of the proposed transferee firm and other information material to the transfer;

(ii) A statement that the customer is not required to accept the proposed transfer and may direct the transfer or firm to liquidate the account or transfer the account to a firm of the customer's selection;

(iii) The name, telephone number and address of a contact person at the transferor firm to whom the customer may give instructions as to the disposition of the account;

(iv) Notice that a failure to respond to the letter within a specified time period, which must be a reasonable period in the circumstances, will be deemed consent to the transfer; and

(v) A clear statement as to the means by which the customer may object to or otherwise respond to the notice of proposed transfer.

(3) Where customer accounts are transferred to a futures commission merchant or introducing broker, other than at the customer's request, the transferee introducing broker or futures commission merchant must provide each customer whose account is transferred with the risk disclosure statements and acknowledgments required by §1.55 (domestic futures and foreign futures and options trading) and §33.7 of this chapter (domestic exchange-traded commodity options) and receive the required acknowledgments within sixty days of the transfer of accounts. This paragraph (a)(3) shall not apply:

(i) As to customers owning transferred accounts for which the transferee futures commission merchant or introducing broker has clear written evidence that the customer has received and acknowledged the required disclosure documents; or

(ii) As to customers for which the transferee futures commission merchant or introducing broker has clear evidence that such customer was at the time the account was opened by the