

the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Alternative methods of compliance approved in accordance with AD 87-17-07 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(e) All persons affected by this directive may obtain a copy of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 86-17-07, Amendment 39-5400.

Issued in Kansas City, Missouri, on April 26, 1996.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-11027 Filed 5-2-96; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 254

Extension of Comment Period; Guides for Private Vocational Schools

AGENCY: Federal Trade Commission.

ACTION: Extension of time for filing public comments.

SUMMARY: The Federal Trade Commission (the "Commission"), as part of a systematic review of all of its current regulations and guides, requested public comments on April 3, 1996 about its Guides for Private Vocational Schools. 61 FR 14685. The Commission solicited comments until May 3, 1996. In response to requests from interested parties, the Commission grants an extension of the time period to file written comments.

DATES: Written comments will be accepted until July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph J. Koman, Jr., Federal Trade Commission, Bureau of Consumer

Protection, Division of Enforcement, Room S-4302, 601 Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 326-3014, or Walter Gross III, Federal Trade Commission, Bureau of Consumer Protection, Division of Service Industry Practices, Room H-200, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 326-3319.

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 96-11037 Filed 5-2-96; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 156

Proposed Rulemaking Concerning Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees and Concerning the Publicizing of Broker Association Memberships

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing a rulemaking which 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").¹

The proposed rulemaking would establish a new Commission Regulation 1.69 which would require self-regulatory organizations ("SROs") to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating and voting on certain matters where the member has 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 existing Commission Regulations 1.3, 1.41 and 1.63 to make modifications made necessary by new Commission Regulation 1.69. The Commission also is proposing to add a new Regulation 156.4 to require that contract markets make more readily available to the public the identity of

¹ Pub. L. No. 102-546, sec. 217, 106 Stat. 3590 (1992).

members of broker associations at their respective exchanges.

DATES: Comments on the proposed rules and proposed rule amendments must be received by July 2, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5100.

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 provide that each contract market must "provide for the avoidance of conflict of interest in deliberations by [its] governing board and any disciplinary and oversight committees."² FTPA Section 217 further describes certain conflict situations where committee members must abstain from deliberations and voting, while also requiring that the Commission promulgate regulations in this regard.

Consistent with Section 217 of the FTPA, proposed Commission Regulation 1.69 would generally bar an SRO committee member from deliberations and voting on a committee decision where the member could potentially be unduly influenced, due to either financial or personal concerns, by the outcome of the decision. The Commission's proposed rulemaking is intended to ensure that SRO committee actions are not infected by any conflict of interest and are in the best interest of the entire SRO. By furthering the impartiality of the SRO decisionmaking process, the Commission believes that Regulation 1.69 should promote public confidence in the integrity of the self-regulatory process.³

² For the purposes of this release, the term "committee" will generally be used to include governing boards, disciplinary committees and oversight committees unless otherwise specified.

³ The Commission notes that proposed Regulation 1.69 would be the latest in an ongoing series of recent Commission rulemakings aimed at enhancing the fairness and impartiality of the SRO committee decisionmaking process. In 1990, the Commission adopted Regulation 1.63 prohibiting persons with histories of disciplinary violations from serving on various SRO committees. Prompted by the FTPA, in 1993, the Commission adopted three separate rulemakings dealing with SRO committee procedures and service. First, the

The Commission notes that the governing boards of futures exchanges are legally bound to not 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 Chicago Board of Trade ("CBOT") emergency actions raising the price limits on various grain futures contracts due to price volatility. The plaintiffs in the case lost money on their grain positions as a result of the CBOT's actions and claimed that the CBOT's Board members acted "wilfully, maliciously, and for their own personal gain" in imposing the emergency price limits. 164 F.2d 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." 164 F.2d 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. Most recently, the Commission included a bad faith standard as part of its amendment to Commission Regulation 1.41(f) setting forth standards to be used by the Commission in assessing temporary exchange actions addressing Regulation 1.41(a)(4) emergencies.⁴ The courts have applied the "bad faith" standard a number of times to cases where a board member may have had a

Commission amended Regulation 1.41 to establish conditions under which contract markets may take emergency actions without prior Commission approval, while also establishing specific procedures for Commission review of such emergency actions. Second, the Commission amended Regulation 1.59 to enhance its prohibition of SRO governing board members and employees disclosing or trading on inside information. Third, the Commission promulgated Regulation 1.64 which establishes committee composition requirements to ensure that a diversity of each SRO's membership is represented on its committees.

⁴ Under Regulation 1.41(f)(4)(i), within ten days after Commission receipt of a notice of an exchange temporary emergency action, the Commission will make a determination to permit such an action to remain in effect unless it is: (1) arbitrary, capricious or an abuse of discretion; (2) lacking a reasonable basis in fact; or, (3) taken in bad faith by the contract market or its officials.

See 58 FR 26229 (May 3, 1993) for a full description of the Commission's rulemaking regarding the review of contract market emergency actions.

personal financial interest in a board decision due to his market position.⁵

The Commission believes that by including more specificity in the factors to be considered with respect to barring persons with potential financial or personal interests from deliberating and voting on committee decisions, the proposed rulemaking should reduce the potential for collateral attack of such committee decisions on the grounds that they were made in "bad faith." The Commission has attempted to structure proposed Regulation 1.69 to provide guidance to SROs, consistent with the new provisions of the FTPA, on what type of committee member circumstances could be the basis for "bad faith" challenges.

In proposing Commission Regulation 1.69, the Commission does not intend to exclude the views of any particular group or groups represented on SRO committees. By requiring that committee members with potential biases abstain from participating in committee proceedings, the Commission is attempting only to ensure that SRO committee decisions serve the best interests of the entire SRO membership and the public, rather than the self-interests of a few committee members.⁶

II. Description of Proposed Rulemaking

The following description consists of a section-by-section analysis of the Commission's proposed rulemaking. In addition to explaining the rationale and operation of the proposal, this description is intended to provide interested persons with a framework for addressing issues which may be raised by particular provisions of the rulemaking.

A. Proposed Regulation 1.69(a)—Definitions⁷

1. Self-Regulatory Organizations

Proposed Regulation 1.69's conflicts restrictions would apply to each SRO governing board, disciplinary committee and oversight panel. Proposed Regulation 1.69(a)(6)'s definition of SRO

⁵ See, e.g., *Sam Wong & Sons, Inc. v. New York Mercantile Exchange*, 735 F.2d 355 (7th Cir. 1975) and *Bishop v. Commodity Exchange, Inc.*, 564 F.Supp. 1557 (S.D.N.Y. 1983).

⁶ The Commission notes that current Regulation 1.64 establishes composition requirements for SRO committees in order to ensure that a diversity of membership interests are represented on such committees. See 58 FR 37644 (July 13, 1993) for a full description of Commission Regulation 1.64 and its underlying rationale. In this connection, the Commission specifically invites comment on how to balance the goals of Regulation 1.64 and the goals of FTPA Section 217 and proposed Commission Regulation 1.69 with respect to conflicts.

⁷ This section will discuss only those term definitions which could raise noteworthy issues.

would include contract markets, clearing organizations and registered futures associations ("RFAs"). While Section 217 of the FTPA adopts that "contract markets" must adopt conflict of interest provisions, the Commission believes that it is appropriate for proposed Regulation 1.69's conflicts restrictions to extend to clearing organizations and RFAs as well.

In making clearing organizations subject to proposed Regulation 1.69, the Commission notes that FTPA Section 217 requires that its conflicts restrictions apply to committees handling certain types of margin changes. Margin levels in the futures industry, however, are established by both contract markets and clearing organizations. The Commission does not find any reason to distinguish between contract markets and clearing organizations with respect to the potential for conflicts of interests when making margin decisions. In addition, there are already a number of instances where the Commission has taken CEA requirements addressed to contract markets and applied them 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 such rules, specifically includes clearing organizations within the definition of contract markets for these purposes. For these reasons, the Commission believes that it would be appropriate to make clearing organizations subject to proposed Regulation 1.69.

The Commission also believes that it would be beneficial to apply its proposed rulemaking to RFAs in order to ensure that their committees would be able to make decisions which were free from the potential taint of committee member bias and self-interest.⁸

The Commission particularly seeks comment on its proposed definition of SRO and whether it would be consistent with the principles endorsed by FTPA Section 217 to extend this proposed rulemaking to clearing organizations and RFAs in addition to contract markets.

2. Governing Boards and Oversight Panels

Proposed Regulation 1.69(a)(2)'s definition of governing board would

⁸ As noted in footnote 10 below, however, the rulemaking would have a more limited impact on RFAs as opposed to contract markets and clearing organizations.

include any SRO "board of directors, board of governors, board of managers, or any similar body" and any subcommittee thereof, such as an executive committee, which is authorized to take action on behalf of the SRO. Proposed Regulation 1.69 also would apply to SRO oversight panels which have the responsibility of formulating and carrying out an SRO's self-regulatory responsibilities.⁹

3. Disciplinary Committees

Proposed Regulation 1.69(a)(1) would define an SRO "disciplinary committee" to mean a body which was authorized by an SRO "to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof."¹⁰ This definition, in combination with the proposed formulation of Regulations 1.69(b)(1) and (2), would ensure that Regulation 1.69's conflicts restrictions would apply to disciplinary committee members when they deliberated and voted on matters as a body, but would not apply to members of disciplinary committees when they individually exercised disciplinary powers. Thus, it would not include a floor committee member who disposes of minor disciplinary violations by individually issuing summary fines or other limited penalties, but it would apply to instances where more than one floor committee member is required to endorse a decision.

While the Commission recognizes that restrictions on conflicted members participating in disciplinary matters promotes the impartiality of the disciplinary process, it also believes that applying such restrictions to floor committee members acting individually may present countervailing problems. One apparent disadvantage of such an

application would be that it might actually diminish the coverage of an SRO's compliance program. For example, if an individual floor committee member were subject to Regulation 1.69's conflicts restrictions, he would be prohibited from summarily fining any floor trader with whom he had one of the specified relationships, even if he directly observed violative conduct by such a trader. In those instances where such a floor committee member was the only committee member responsible for monitoring trading activity in a particular pit, such behavior might go unpunished.

Applying conflicts restrictions to disciplinary committee members when they act individually might also present more practical difficulties. As currently proposed, Regulation 1.69 would require that before each disciplinary proceeding SRO staff must determine whether any committee member has a conflict in the matter. Floor committee members, however, typically issue summary fines to SRO members who commit minor rule violations on the trading floor (e.g., violations of dress and decorum rules). Requiring floor committee members to submit to some prior staff review in these circumstances could undermine, or possibly eliminate, their ability to discipline violative behavior expeditiously.

The Commission seeks comment on its proposed application of Commission Regulation 1.69's conflicts restrictions to disciplinary committees and floor committees in particular. Does the current proposed approach strike an equitable balance between the need for an impartial disciplinary mechanism versus the need for the deterrent effect of having floor committee members on exchange trading floors? Are there other ways in which to further both of these goals?

4. Significant Actions

As explained below, proposed Regulation 1.69's conflicts restrictions would apply to SRO committees when they consider any "significant action which would not be submitted to the Commission for its prior approval." Proposed Regulation 1.69(a)(7)'s definition of that term would include, at a minimum, two types of SRO actions. First, the term would include SRO actions or rule changes which address emergencies at an SRO, as they are defined by Commission Regulation 1.41(a)(4), including actual or attempted market corners, squeezes or manipulations. Second, proposed Regulation 1.69(a)(7)'s definition also would include SRO margin changes which "respond to extraordinary market

conditions when such conditions are likely to have a substantial effect on prices in any contract traded or cleared" at the SRO.¹¹

The proposed definition of a "significant action which would not be submitted to the Commission for its prior approval" generally follows Congress' definition of that same term in FTPA Section 217. The Commission believes that its proposed definition should capture those circumstances in which a committee member's conflict would have the greatest potential to influence SRO actions. The proposed definition has been limited to committee actions which could have an immediate impact on the marketplace and, consequently, the positions of SRO committee members, because those are the situations in which a decision-maker most likely would be influenced by self-interest. The proposal does not intend to suggest that any particular significant action would have a predictable impact on market prices; in fact, the experience of the Commission in assessing the consequences of prior emergency actions has been to the contrary. That being said, it is critical for public confidence in self-regulation that such actions be perceived as being applied even-handedly and not to the advantage or disadvantage of any given group. The Commission has attempted to formulate a definition which addresses the objectives explicitly set forth in the legislation the rulemaking is intended to implement, but which, at the same time, does not do unnecessary injury to the mechanics of the SRO committee decisionmaking process and the ability of the SRO to engage in effective self-governance activities.

The Commission seeks comment on whether there are any other types of SRO actions or rule changes which should be subject to Regulation 1.69's conflicts restrictions. For instance, the Commission currently proposes to limit

⁹In order to consolidate the Commission's Regulations, "oversight panel" would be defined by a new Commission Regulation 1.3(tt). That provision would define oversight panel for application in both current Regulation 1.63 and proposed Regulation 1.69. The definition would be identical to Commission Regulation 1.63(a)(4)'s current oversight panel definition.

The Commission notes that its "oversight panel" definition is intended to cover floor committees when they make decisions such as changing a price quote on a price change register, setting modified closing call ranges and establishing settlement prices. Please comment on whether the oversight panel definition needs to be clarified in any way to incorporate floor committees when they engage in such activities.

¹⁰In this connection, the Commission also is proposing to amend Regulation 1.63's definition of "disciplinary committee" so that it will be identical to proposed Regulation 1.69(a)(1). To make these two definitions identical, Regulation 1.63(a)(2) would be revised by deleting "disciplinary hearings" and substituting "disciplinary proceedings."

¹¹Notably, under this definition, RFA committees would not consider either of the two types of SRO actions which would constitute a "significant action which would not be submitted to the Commission for its prior approval." Accordingly, this aspect of Regulation 1.69's conflicts restrictions would be inapplicable to RFA committee members. See proposed Commission Regulation 1.69(b)(2) and Section II.C. below. RFA committee members would, however, be subject to proposed Regulation 1.69(b)(1)'s restrictions on SRO committee members considering matters in which they had a relationship with the named party in interest (e.g., disciplinary cases). See proposed Commission Regulation 1.69(b)(1) and Section II.B. below. The Commission invites comment on whether it should revise proposed Commission Regulation 1.69 to specifically exclude RFA committees from being subject to Regulation 1.69(b)(2)'s restrictions on SRO committees which consider a "significant action which would not be submitted to the Commission for its prior approval."

the conflicts restrictions to SRO actions which would not be submitted for prior Commission review, because the Commission approval process is intended to consider the public interest and to insulate SRO actions from impropriety. The rule approval process requires a discussion of all opposing views and a statement of the purpose of each rule change. Ordinarily, such rule changes do not even have the potential to affect prices. Nonetheless, the Commission requests comment on whether the public interest would be better served if a broader range of SRO actions, whether or not there was prior Commission review, were subject to conflicts restrictions. If so, what other types of SRO actions should be covered?¹²

*B. Proposed Regulation 1.69(b)(1)—
Relationship With Named Party in
Interest*

Proposed Regulation 1.69(b)(1) would mandate 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."¹³ Proposed Regulations 1.69(b)(1) (i) through (v) would list the types of relationships between a committee member and named party in interest which would require abstention, including family¹⁴ and employment¹⁵ relationships.

Another type of relationship which would be the basis for abstention, under proposed Regulation 1.69(b)(1)(iv), would be if the committee member and the named party in interest had a "significant, ongoing business relationship." Under this provision, for example, a committee member would be prohibited from participating in a matter

¹² For example, should changes to a price quote on a price change register, setting modified closing call ranges, or establishing settlement prices be particularly included in Regulation 1.69's definition of a "significant action which would not be submitted to the Commission for its prior approval."

¹³ For these purposes, proposed Commission Regulation 1.69(a)(5) would define a "named party in interest" as a "party who is identified as the subject of any matter being considered" by an SRO committee.

¹⁴ Proposed Regulation 1.69(b)(1)(v) would prohibit a committee member from deliberating and voting on a matter if he was in the immediate family of the named party in interest. Proposed Regulation 1.69(a)(3) would define "immediate family" to mean a person's "spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law."

¹⁵ Under proposed Regulation 1.69(b)(1)(ii), a committee member could not deliberate or vote on any matter in which the named party interest was an employer, employee or fellow employee of the committee member.

in which he and the named party were co-owners of a business venture. In order to clarify this provision, the Commission proposes to include any clearing relationship within the scope of a "significant, ongoing business relationship," but proposes to exclude relationships which are limited to executing futures or option contract transactions¹⁶ with each other. In drawing this distinction, the Commission notes that two parties in a clearing relationship typically rely upon each other, to some degree, to carry on their respective businesses. Accordingly, the Commission believes that parties to a clearing relationship may not be totally impartial if one party was involved in considering an SRO committee action which directly bore upon the other party. The Commission notes that under proposed Commission Regulation 1.69(b)(1)(iii), members of a broker association would be required to abstain from deliberations and voting on any SRO committee matter in which one of its members was a named party in interest.

The Commission invites comment as to whether any other specific type of relationship should be included or excluded as a "significant, ongoing business relationship" for the purposes of proposed Regulation 1.69(b)(1)(iv). For example, two SRO members might do a significant amount of transactional business with each other outside of the SRO as counterparties in the over-the-counter market. Could such a relationship give rise to a potential conflict because of the frequency of contacts? Or, should whether or not a transaction is arms length govern the possibility for conflicts?

While the Commission anticipates that proposed Regulation 1.69(b)(1)'s restrictions would most oftentimes be applied to disciplinary cases because they involve named respondents, the provision also 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 conflict restrictions would apply to such committees if they were to review a membership application or consider some action with respect to a particular individual (e.g., directing a person to reduce his position in a contract).

The Commission believes that this proposed provision should reduce the

¹⁶ For these purposes, the Commission would consider exchange of futures for physical transactions and CEA Section 4(c) contract market transactions to be futures and option contract transactions under proposed Regulation 1.69(b)(1)(iv).

potential for committee members to be unduly influenced by family and personal business considerations. Accordingly, the provision should help to assure that committee decisions will be the result of fair deliberations and will not be tainted by the real or perceived self-interest of committee members.

The Commission notes that Section 217 of the FTPA states that contract markets must adopt rules requiring that committee members abstain from "confidential" deliberations and voting on matters where they have a relationship with the named party in interest. Commission Regulation 1.69(b)(1), which is being proposed in furtherance of that provision, takes the more prophylactic approach of applying its conflicts restrictions to all deliberations and voting on such matters, whether they are confidential or non-confidential. The Commission believes that this approach should help to reduce the potential for biased decisionmaking in both settings. Theoretically, in non-confidential committee meetings outsiders would be able to monitor the fairness of a committee's decision-making process. The Commission questions, however, whether there could ever be an effective outside presence at SRO committee proceedings given their history of usually being closed to the public. In addition, the Commission believes that even in a public setting it would be difficult to detect any one committee member's bias or prejudice on a matter unless the member also publicly disclosed any possible relationships with the named party in interest.

*C. Proposed Regulation 1.69(b)(2)—
Financial Interest in an Action*

Proposed Commission Regulation 1.69(b)(2) would require that SRO committee members abstain from committee deliberations and voting on certain matters in which they would have a "direct and substantial financial interest." The proposed restriction would only apply when a committee is considering "a significant action which would not be submitted to the Commission for its prior approval." As discussed in Section II.A. above, those committee actions would include, at a minimum, Regulation 1.41(a)(4) emergency actions and margin changes which respond to market conditions which are likely to have a substantial effect on the prices of any contract traded or cleared at the SRO.¹⁷

¹⁷ See proposed Commission Regulation 1.69(a)(7).

In determining a committee member's financial interest in a possible committee action, Regulation 1.69(b)(2) would require SROs to review for positions of the member, the member's family, the member's firm and the customers of the member's firm held in any contract which could be affected by the committee action.¹⁸ With respect to a committee member's personal positions, proposed Regulations 1.69(b)(2) (i) and (ii) specifically would require that SROs consider gross positions in the subject contract 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.

Regarding positions of the member's family, proposed Regulation 1.69(b)(2)(iv) would require that SROs review gross positions held in the personal accounts or Regulation 1.3(j) controlled accounts of the member's immediate family. For these purposes a committee member's immediate family would be defined by proposed Regulation 1.69(a)(3), excluding those immediate family members who were not dependents of the member and who did not reside with the member. The Commission has proposed this exclusion in order to limit the provision to position information which a committee member likely would know in the ordinary course.

SROs reviewing for a committee member's financial interest in a committee matter also would be required to consider gross positions held in the member's firm's proprietary accounts, 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.

Proposed Commission Regulation 1.69(b)(2) would specifically fix the types of positions which SROs would have to review in determining whether a committee member had a "direct and substantial financial interest" in the outcome of the committee's consideration of "a significant action which would not be submitted to the Commission for its prior approval." The proposal would not, however, set any specific standards as to what position

size warranted a member's abstention from deliberations and voting on a matter. Rather, the Commission has endeavored to give SROs flexibility in complying with this aspect of its proposed rulemaking.

The criteria for each SRO in evaluating whether a committee member would have a "direct and substantial financial interest" in a committee action must be the extent to which an individual would be exposed to market risk, the size of the individual's positions, whether or not market neutral, relative to the market and, with respect to a committee member's affiliated firm, the potential effect on the firm's capital. The Commission would expect each SRO to weigh a variety of factors in making these determinations. Each SRO should assess the magnitude and probable market impact of the underlying "significant action." A possible margin change or emergency action for a contract might be so profound that even the smallest position in the contract could be affected by the measure. Likewise, a committee member might not have a particularly large position in any one of the categories listed in Regulation 1.69(b)(2) (i) through (vi). However, if a member's positions in each one of these categories were similarly aligned such that they all would be favorably or unfavorably impacted by even a moderate margin change, the member should be required to abstain from participating in deliberations and voting on such a possible margin action.

The Commission invites comment on its proposed approach to determining whether a committee member has a "direct and substantial financial interest" in a matter being considered by an SRO committee. What numerical thresholds for margin changes or position sizes could the Commission establish for SROs in this regard? What other requirements could the Commission impose in this area to require SROs to make more objective abstention decisions? For example, a straightforward approach to this issue could be to require abstention by committee members with any position in a contract which could be impacted by a committee's significant action. Please comment on the effect of such an approach.

D. Proposed Regulation 1.69(b)(3)—Abstention Decision

Proposed Commission Regulation 1.69(b)(3) would mandate procedures which SROs would have to follow in determining whether any SRO committee members must abstain from

deliberations and voting on a matter due to a conflict. These procedural requirements would apply whenever an SRO governing board, disciplinary committee or oversight panel took up a matter involving: (1) a named party in interest (See proposed Regulation 1.69(b)(1)); (2) an action or rule change addressing a Regulation 1.41(a)(4) emergency (See proposed Regulations 1.69(a)(7)(i) and 1.69(b)(2)); or, (3) a margin change designed to respond to extraordinary market conditions when such conditions would be likely to have a substantial effect on prices in any contract traded at the SRO (See proposed Regulations 1.69(a)(7)(ii) and 1.69(b)(2)).

Prior to a committee's consideration of any such matter, proposed Regulation 1.69(b)(3) would require the SRO's staff to make a determination whether any member of the committee was subject to any of the conflicts situations listed in Regulations 1.69(b) (1) and (2). In determining whether a conflict existed under Regulation 1.69(b)(1), the Commission would expect SRO staff to ascertain whether any committee member had a relationship with the named party in interest based upon its available records and questioning of the committee's members. In the case of conflicts based upon a committee member's financial interest in a committee's action under Regulation 1.69(b)(2), SRO staff would be required to review the positions listed in Regulation 1.69(b)(2) for each committee member. In ascertaining this position information, an SRO's staff would be permitted 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 committee members pursuant to Regulation 1.69(c);¹⁹ and,

(3) Any other source of position information which was readily available to the staff.²⁰

The Commission believes that by consulting this range of easily accessible sources of position data, SRO staffs should be able to make a well-informed decision as to whether any committee member has a financial interest in a committee action.

Under proposed Regulations 1.69(b)(3)(i) (B) and (C), SRO staff would be required to determine whether any committee member had a conflict, under either Regulation 1.69(b)(1) or (2), and

¹⁹ See proposed Commission Regulation 1.69(c) and related Section II.F. of this release below for a description of each committee member's position reporting responsibility.

²⁰ Proposed Commission Regulation 1.69(b)(3)(i)(A) (1) through (3).

¹⁸ While proposed Regulation 1.69(b)(2) would specify what positions SROs must review in determining whether an SRO committee member would have a "direct and substantial financial interest" in an SRO committee action, proposed Regulation 1.69(b)(3) would specify what sources of position information an SRO would be required to consider, at a minimum, in making such a determination. See Section II.D. of this release below for a further description of Regulation 1.69(b)(3).

to direct any committee member with such a conflict to abstain from deliberations and voting on the matter.

Whenever SRO staff made an abstention determination pursuant to proposed Regulation 1.69(b)(3)(i), proposed Commission Regulation 1.69(b)(3)(ii) would require the SRO committee considering the underlying substantive matter to include certain information regarding the abstention determination in the minutes of its meeting. Such a record would be required to indicate, among other things, the committee members who attended the meeting, the staff member(s) who reviewed the committee members' positions, a listing of the position information reviewed for each committee member, the names of any committee member directed to abstain and the reasons thereof. The Commission believes that these recordation requirements would enable SROs to demonstrate the propriety of their abstention decisions should they be called into question by either SRO members, the Commission or the public. In addition, such records would be useful to the Commission in any future evaluation of Regulation 1.69 and the SROs' implementing rules and procedures.

In instances when a committee member was permitted to deliberate but not vote on a matter pursuant to proposed Commission Regulation 1.69(b)(4), the committee's records would be required to include a full description of the views expressed by such member during the committee's deliberations on the underlying substantive matter. This description should not be limited to a recital of the committee member's presence at the meeting, but should detail the views and supporting arguments offered by the member at such meeting. To ensure a full description of the member's views, SRO committees should consider making transcripts of the pertinent portions of such a meeting. The Commission believes that this requirement should deter such a committee member from offering strictly self-interested advice to an SRO committee.

Under proposed Regulation 1.69(b)(3), the Commission would confer the responsibility for making abstention determinations on SRO staff. The Commission believes that this approach would best assure that the process of making such determinations would not adversely impact the SRO committee decisionmaking process.

The Commission understands that this provision's proposed approach would closely follow the procedures

which most SROs currently use when handling committee member conflicts. Notably, a number of SRO staff members indicated to Commission staff that SRO committee members rarely resist their staffs' abstention recommendations based upon potential conflicts.

The Commission invites comment on the efficiency of these proposed procedures for handling abstention decisions, and particularly its approach to having SRO staff gather position information. Would the proposed procedures be administratively burdensome for SRO staffs or should the Commission grant SRO staffs more discretion in this regard? Would the specified range of position information to be gathered provide a sufficient basis for making a fair assessment of a committee member's potential conflict of interest with respect to any particular committee matter?

Should the Commission's rulemaking include any provisions for appealing abstention determinations by SRO staff? For instance, should the rulemaking allow SRO committees to include "conflicted" members in deliberations and voting on matters when the member's vote was needed to obtain a quorum?²¹

E. Proposed Regulation 1.69(b)(4)—Participation in Deliberations

In a limited number of circumstances, proposed Commission Regulation 1.69(b)(4) would permit 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.²² Regulation 1.69(b)(4) only would permit such a "deliberation exception" for matters in which a committee member "knowingly [had] a direct and substantial interest in the result of the vote" under proposed Regulation 1.69(b)(2). Consistent with Section 217 of the FTPA, this exception would not apply to matters in which a committee member had a conflict, under proposed Regulation 1.69(b)(1), due to

²¹ Note that, as described in Section II.E. below, the Commission's proposed rulemaking already would permit, in specified circumstances, "conflicted" committee members to participate in committee deliberations, but not voting, on certain matters.

²² Under Regulation 1.69's proposed abstention determination procedures, SRO staff would make the initial determination of whether a committee member should be required to abstain from deliberations and voting on any particular committee matter. For reasons discussed in this section below, however, the Commission proposes that only SRO committees, and not SRO staff, be able to permit a committee member to participate in deliberations, but not voting, on a committee matter.

his or her relation with the matter's named party in interest.

While the conflicts restrictions established by Section 217 of the FTPA further the fairness and integrity of the decisionmaking processes of SRO committees, Section 217 also recognizes that in some instances a committee member with a conflict with respect to a particular matter might also have special knowledge or experience regarding that matter. Accordingly, proposed Regulation 1.69(b)(4) would allow such members to participate in deliberations only, but subject to qualifying criteria limiting such participation to instances where the committee believed that it had insufficient expertise to consider a matter and needed such a member to participate.

In determining whether to permit a committee member to deliberate on a matter, proposed Regulation 1.69(b)(4)(i) would require the presiding committee to consider a number of factors including: (1) Whether the member had special expertise in the matter involved which 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 member's participation in deliberations would be necessary for the committee to obtain a quorum.²³

Given the factors which must be considered, the Commission believes that deliberation exception decisions should be made by the committee involved, rather than SRO staff. For any particular matter to be considered by an SRO committee, 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.

In order to help ensure that committees handle deliberation exception decisions in an impartial manner, proposed Commission Regulation 1.69(b)(4)(ii) would require that any such exception must be approved by all "public" members of the presiding committee (*i.e.*, committee members who are not members of the SRO) who were present when the

²³ This factor presumes that an SRO's quorum requirement is based upon the number of committee members who can deliberate on a matter and not upon the number of committee members who can vote on a matter. See Robert's Rules of Order § 3 (Henry M. Roberts III and William J. Evans, eds., 9th Ed. 1990). The Commission invites comment from SROs on whether the proposed approach would be consistent with their committees' quorum requirements.

committee made such a determination. This requirement would not apply to those SRO governing boards, disciplinary committees or oversight committees which do not normally have public members.²⁴

The Commission invites comment on its proposal to permit, in certain circumstances, an SRO 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. Notwithstanding the statute, should the possibility of allowing an interested committee member to participate in deliberations be further limited or even prohibited entirely? Would the proposed exception for deliberations provide a person who could not vote on a matter with an opportunity to unduly influence a committee's decision? Would the proposed requirements strike a proper balance between ensuring that SRO committees make well-informed decisions while minimizing the influence of a committee member's potential bias or self-interest in the matter?

F. Proposed Regulation 1.69(c)—Disclosure Requirement

Under proposed Commission Regulation 1.69(c), whenever an SRO committee considered a "significant action which would not be submitted to the Commission for its prior approval," as that term is defined by proposed Regulation 1.69(a)(7), each member of the committee would be required to disclose to the SRO's staff any position information which was known or should have been known by the member with respect to the positions listed in 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). Proposed Regulation 1.69(c) would make it a direct violation of the Regulation, prosecutable by the Commission, for any committee member to fail to report such information to the SRO's staff.

For the purposes of this provision, committee members would be presumed to have knowledge of gross positions held in: (1) the member's personal or controlled accounts (See proposed Regulation 1.69(b)(2)(i)); (2) accounts in which the member had a significant financial interest (See proposed Regulation 1.69(b)(2)(ii)); (3) proprietary

accounts at the member's firm (See proposed Regulation 1.69(b)(2)(iii)); and, (4) the personal or controlled accounts of persons in the member's immediate family (excepting family members who were not dependents of the committee member and did not reside at the member's residence) (See proposed Regulation 1.69(b)(2)(iv)). While it would always be a question of fact as to what position information a committee member knew at a particular point in time, the Commission believes that a committee member usually should be aware of this type of position information because it would be based on either his own trading activity or the trading activity of parties with whom he would have a close relationship. This presumption of knowledge would be rebuttable, but the committee member involved would bear the burden of providing evidence of his or her lack of knowledge.

The Commission believes that its proposed Regulation 1.69(c) reporting requirement should help SRO staff and committees to better determine whether committee members have conflicts which warrant abstention from committee deliberations and voting. In addition, the Commission believes that its enforcement powers under Regulation 1.69(c) should help ensure compliance with the conflicts restrictions. Of course, each SRO would continue to have an independent responsibility under Section 5a(8) of the CEA and Commission Regulation 1.51 to enforce any of its own rules implementing Regulation 1.69.

G. Proposed Regulation 1.69(d)—Violations of SRO Rules

Proposed Commission Regulation 1.69(d) would make it a violation for an SRO to permit a committee member to participate in deliberations or voting on a matter if such participation would violate any SRO rule implementing the conflicts restrictions of Commission Regulations 1.69(b)(1) or (2). As with proposed Regulation 1.69(c), Regulation 1.69(d) would enable the Commission to enforce the conflicts restriction requirements as implemented by SRO rules if necessary. The Commission believes that this reservation of enforcement power would be appropriate given Regulation 1.69's purpose of upholding the fairness and integrity of the SRO decisionmaking process.

The Commission invites comment on the appropriate enforcement mechanisms for implementing the FTPA's conflicts restrictions.

H. Proposed Regulation 1.69(e)—Liability to Other Parties

Under proposed Commission Regulation 1.69(e), SROs, SRO officials and SRO staffs involved in reviewing committee member positions and making abstention decisions, pursuant to Regulation 1.69(b)(3), would be protected from liability to any party other than the Commission. This limitation of liability is mandated by Section 217 of the FTPA.

I. Amendments to Current Commission Regulations Made Necessary by Proposed New Commission Regulation 1.69

1. Proposed Regulation 1.3(tt)—Definition of Oversight Panel

As indicated in Section II. A. above, the Commission proposes to establish a definition for oversight panels in the definitional section of the Commission's regulations. The definition would be identical to the definition of oversight panel in current Commission Regulation 1.63(a)(4). As part of its proposal, the Commission would delete Regulation 1.63(a)(4) and make the new Regulation 1.3(tt)'s definition of oversight panel applicable to both Regulation 1.63 and proposed Regulation 1.69.

2. Proposed Regulation 1.41(f)—Voting on Temporary Emergency Rules

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 an action under contract market rules implementing proposed Regulation 1.69,²⁵ as part of its rulemaking the Commission is proposing to amend Regulation 1.41(f) to provide that such abstaining board members should not be included in determining whether a temporary emergency action has been approved by two-thirds of a governing board.

²⁵ Contract market governing board members would be subject to Regulation 1.69's conflict restrictions whenever they considered such temporary emergency actions. See proposed Commission Regulations 1.69(a)(7)(i) and 1.69(b)(2).

²⁴ See Commission Regulations 1.64 (b) and (c) which respectively require governing boards and certain disciplinary committees to include non-SRO member representatives.

*J. Proposed Regulation 156.4—
Disclosure of Broker Association
Membership*

Section 102 of the FTPA amended Section 4j(d) of the CEA to prohibit the knowing execution of a customer order by a floor broker opposite any broker or trader with whom the floor broker has a specified business relationship, unless the Commission has adopted rules requiring exchange procedures and standards designed to prevent violations of the CEA attributable to broker association trading. In response to this provision, the Commission adopted Part 156 to its regulations in order for contract markets to identify and enhance surveillance of broker associations.²⁶ Among other things, the Commission's Part 156 Regulations require that contract markets register broker associations at their respective exchanges and maintain records listing "the name of each person who is a member or otherwise has a direct beneficial interest in [a] broker association."

As part of the current rulemaking, the Commission is proposing to amend its Part 156 Regulations by adding a new Regulation 156.4 which would require contract markets to post a listing of the broker association membership information which they are currently required to compile pursuant to Regulation 156.2(b). This posting should be made in a place designed to ensure its availability to the general public such as an exchange's lobby or other common access area. The Commission believes that this requirement would serve the public interest by enabling the public to take broker association relationships into account when making trading decisions and assessing exchange actions generally.

III. Conclusion

The Commission believes that the proposed new Regulation 1.69 and the proposed amendments to Regulations 1.3, 1.41 and 1.63 meet the statutory directive of Section 5a(17) of the CEA as it was amended by Section 217 of the FTPA. The proposal would establish guidelines and factors to be considered in determining whether an SRO committee member was subject to a conflict which could potentially impinge on his ability to make fair and impartial decisions in a matter and, thus, warrant abstention from participating in committee deliberations and voting.

²⁶ See 58 FR 31167 (June 1, 1993) for a full description of the Commission's Part 156 rulemaking regarding broker associations.

The Commission invites public comments on any aspect of this proposed rulemaking, including whether it would fulfill the implementation requirements of FTPA Section 217. The Commission also invites comment on whether any other revisions should be made to ensure greater fairness and impartiality in the decisionmaking processes of SRO committees. For instance, would it be beneficial for the Commission to amend current Commission Regulation 1.64 to provide a higher level of representation for public, non-SRO members on SRO boards and committees?

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 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 RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets. 47 FR 18618, 18619 (April 30, 1982). Furthermore, the Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals affecting clearing organizations and registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986).

The proposed rulemaking would affect individuals who serve on SRO governing boards, disciplinary committees and oversight panels. The Commission does not believe that its proposed rulemaking would have a significant economic impact on these SRO committee members. The proposed rulemaking would require these committee members to disclose to their SROs certain position information which is known or should be known to them at the time that their committees consider certain significant actions which would not be submitted to the Commission for approval. 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 and because the significant actions which would give rise to this requirement should occur on an infrequent basis.

Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the

RFA, 5 U.S.C. § 605(b), that the proposed rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities: Proposed Collection; Comment Request

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1988), 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 has submitted the proposed rulemaking and its associated information collection requirements to the Office of Management and Budget ("OMB"). The burden associated with the entire collection, including this proposed regulation and amendments, is as follows:

Average burden hours per response—
3,546.26
Number of respondents—15,286.00
Frequency of response—On Occasion

The burden associated with the proposed regulation and amendments 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 that would be required by the proposed rulemaking should contact Jeff Hsu, OMB, Room 3228, NEOB, Washington, D.C. 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5170.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 156

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act, the Commission is proposing to amend Title 17, Chapter I of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 USC 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 1.3 would be proposed to be amended by adding paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

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

3. Section 1.41 would be proposed to be amended by adding paragraph (f)(10) 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 regulation.

4. 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 a committee of persons which is authorized by a self-regulatory organization to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof.

* * * * *

5. Section 1.63(a)(4) would be proposed to be removed.

6. Section 1.63(a)(5) would be proposed to be redesignated as § 1.63(a)(4).

7. Section 1.63(a)(6) would be proposed to be redesignated as § 1.63(a)(5).

8. In redesignated § 1.63(a)(5)(ii), the reference to "subparagraphs (a)(6)(i) (A) through (C)" would be proposed to be amended to read "paragraphs (a)(5)(i) (A) through (C)".

9. In redesignated § 1.63(a)(5)(iv), the reference to "paragraphs (a)(6)(i) through (iii)" would be proposed to be amended to read "paragraphs (a)(5)(i) through (iii)".

10. Section 1.63(a)(7) would be proposed to be redesignated as § 1.63(a)(6).

11. In Section 1.63(d), the reference to "paragraph (a)(6)(i)" would be proposed to be amended to read "paragraph (a)(5)(i)".

12. 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 a committee of persons which is authorized by a self-regulatory organization to conduct disciplinary proceedings, to settle disciplinary charges, to impose sanctions, or to hear appeals thereof.

(2) "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 for and on behalf of the self-regulatory organization with respect to a matter covered by this section.

(3) A person's "immediate family" means the person's spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law.

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

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

(6) "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).

(7) "Significant action which would not be submitted to the Commission for its prior approval" includes, at a minimum, any of the following types of self-regulatory organization actions or rule changes which 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); and,

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions when such conditions are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization.

(b) Self-Regulatory Organization Rules. Each self-regulatory organization shall maintain in effect rules which 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, which require, at a minimum, that:

(1) Relationship With Named Party in Interest. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel shall abstain from such body's deliberations and voting on any matter where such member:

(i) Is the named party in interest;

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

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

(iv) Has any other significant, ongoing business relationship with the named party in interest, including clearing relationships, but not including relationships limited to executing futures or option contract transactions with each other; or,

(v) Is in the immediate family of the named party in interest.

(2) Financial Interest in an Action. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel shall abstain from such body's deliberations and voting on any significant action which would not be submitted to the Commission for its prior approval if the member knowingly has a direct and substantial financial interest in the result of the vote. In determining whether a member has a direct and substantial financial interest in the result of such a vote, among other things, a self-regulatory organization's rules must consider with respect to any contract or product which the self-regulatory organization reasonably expects could be affected by the action:

(i) Gross positions held in the member's personal accounts or "controlled accounts," as defined in § 1.3(j);

(ii) Gross positions held in accounts in which the member has a significant financial interest;

(iii) Gross positions held in proprietary accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(iv) Gross positions held in the personal accounts or "controlled accounts," as defined in § 1.3(j), of any person in the member's immediate family, unless such person is not a dependent of the member and does not reside at the member's residence;

(v) Net positions held in "customer" accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and,

(vi) Gross position of any customer who constitutes a significant portion of business for the member or the member's affiliated firm.

(3) Abstention Decision.

(i) Prior to the start of any self-regulatory organization's governing board, disciplinary committee or oversight panel deliberations or voting on a matter, appropriate self-regulatory organization staff shall:

(A) review the positions described in paragraph (b)(2) of this section for each member of such body based upon:

(1) The most recent large trader reports and clearing records available to the staff;

(2) Position information provided by the member to the staff pursuant to Paragraph (c) of this section; and,

(3) Any other source of position information which is readily available to the staff;

(B) Determine whether any such member is subject to any of the conditions listed in paragraphs (b)(1) or (2) of this section; and,

(C) Direct any such member to abstain from deliberations and voting on the matter.

(ii) Whenever the staff of a self-regulatory organization makes an abstention determination pursuant to paragraph (b)(3)(i) of this section, the appropriate governing board, disciplinary committee or oversight panel shall include in the minutes or records of its subsequent meeting the following information regarding any such determination:

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

(B) The name of any member who voluntarily recused himself from deliberations and/or voting on a matter and the reason for the recusal, if stated;

(C) The names of the individuals reviewing the positions described in paragraph (b)(2) of this section;

(D) A list referencing the position information which was reviewed for each member;

(E) The name of any member who was directed to abstain from any deliberations and voting on a matter and the reason for the abstention;

(F) A description of the procedures followed in making any determination

on abstentions from deliberations and voting; and,

(G) In those instances when a committee member is permitted to deliberate but not vote on a matter pursuant to this paragraph (b)(4) of this section, a full description of the views expressed by such member during deliberations.

(4) Participation in Deliberations.

(i) 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 matter for which he otherwise would be required to abstain under the self-regulatory organization's rules implementing the requirements of paragraph (b)(2) of this section. In making such a determination, the presiding body should consider the following factors:

(A) Whether the member has expertise, knowledge or experience in the matter under consideration which few or no other members of the presiding body have;

(B) Whether the ability of the presiding body to deliberate meaningfully would be adversely affected by the non-participation of the member; and,

(C) Whether the member's participation in deliberations is necessary for the presiding body to achieve a quorum in the matter.

(ii) Any determination to so allow a member to participate in deliberations on a matter shall be approved by each of those members of the presiding body who are present and who are non-members of the self-regulatory organization.

(c) Disclosure Requirement. Each member of a self-regulatory organization governing board, disciplinary committee or oversight panel which is to consider a matter referred to in paragraph (b)(2) of this section shall disclose to the appropriate self-regulatory organization staff prior to such consideration the position information referred to in paragraph (b)(2) of this section which is known or should be known to the member at that time. For these purposes, members shall be presumed to have knowledge of those positions referred to in paragraphs (b)(2) (i) through (iv) of this section.

(d) Violations of Self-Regulation Organization Rules. No self-regulatory organization may permit a person to engage in deliberations or voting on a matter if it would violate any rule adopted by the self-regulatory organization in compliance with paragraphs (b) (1) or (2) of this section.

(e) Liability to Other Parties. No self-regulatory organization or self-

regulatory organization official, employee or member, other than the member whose position or positions are being reviewed, or delegee or agent thereof, shall be subject to liability under this section, except for liability in an action initiated by the Commission, in connection with the review required by paragraph (b)(3) and any action taken or required to be taken thereunder.

PART 156—BROKER ASSOCIATIONS

1. The authority citation for Part 156 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6j(d), 7a(b) and 12a.

2. Section 156.4 would be proposed to be added to read as follows:

§ 156.4 Disclosure of Broker Association Membership

Each contract market shall post in a location accessible to the public a list of all registered broker associations which identifies for each such association the name of each person who is a member or otherwise has a direct beneficial interest in the association. This list shall be updated at least semi-annually.

Issued in Washington, D.C. on April 29, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-10936 Filed 5-2-96; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 346

[Docket No. RM96-10-000]

Oil Pipeline Cost-of-Service Filing Requirements; Notice of Proposed Rulemaking

April 29, 1996.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise Part 346 of its regulations to make the cost-of-service filing requirements of that Part applicable to the Trans-Alaska Pipeline System (TAPS) carriers and carriers delivering oil directly or indirectly to TAPS. These carriers were inadvertently excluded from the streamlined procedural rules in Part 346 required by the Energy Policy Act of 1992.

DATES: Comments are due on or before June 3, 1996.