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- 627. **ARBITRATION COMMITTEE**

## Chapter 6 Arbitration

[Arbitrations that were filed prior to November 29, 2007, will continue to be governed by the Rules and Regulations in former CBOT Chapter 6.]

### JURISDICTION

#### 600. DISPUTES SUBJECT TO CBOT ARBITRATION

##### 600.A. Disputes Among Members

It is contrary to the objectives and policy of the Exchange for members to litigate certain Exchange-related disputes. Disputes between and among members that are described below and that are based upon facts and circumstances that occurred at a time when the parties were members shall be subject to mandatory arbitration in accordance with the rules of this Chapter:

1. claims between members that relate to or arise out of any transaction on or subject to the rules of the Exchange;
2. claims between or among members relating to ownership of, or interests in, trading rights on the Exchange; and
3. claims between members relating to the enforceability of:
  - a. non-compete clauses to the extent they relate to the Exchange,
  - b. terms of employment on the trading floor, and
  - c. financial arrangements relating to the resolution of error trades that are included in any employment agreement.

Nothing in this rule, however, shall require a member employee to submit to arbitration any claim that includes allegations of a violation of federal, state or local employment discrimination, wage payment or benefits laws.

##### 600.B. Disputes Between Members and Certain Non-Member Employees

The enforceability of the following provisions of an employment agreement between a member and a non-member employee registered pursuant to Rule 501 shall be subject to mandatory arbitration in accordance with the rules of this Chapter:

1. non-compete clauses to the extent that they relate to the Exchange; and
2. terms of employment on the trading floor.

Nothing in this rule, however, shall require a non-member employee to submit to arbitration any claim that includes allegations of a violation of federal, state or local employment discrimination, wage payment or benefits laws. A non-member employee shall mean a member's bona fide employee who has been registered by the Exchange to work on the trading floor.

##### 600.C. Claims Against the Exchange

Claims against the Exchange pursuant to the provisions of Rule 578.C., Rule 578.D., Rule 579.C., and/or Rule 587.C. shall be subject to mandatory arbitration in accordance with the rules of this Chapter, provided the claimant has complied with all pre-filing requirements under the applicable rule(s).

##### 600.D. Permissive Arbitrations

The following may be submitted for arbitration at the Exchange and, in the event such a claim is submitted against a member, that member is required to arbitrate the dispute under these rules, unless otherwise provided:

1. claims of a customer against a member that relate to or arise out of any transaction on or subject to the rules of the Exchange;
2. claims against an Exchange clearing member and its Globex user pursuant to Rule 588.C.3.a., b. or c., where the claimant has complied with the provisions of Rule 588.D., and pursuant to Rule 588.C.3.d., provided that any non-member Globex user has consented to arbitration of the dispute at the Exchange within 21 days of receipt of a claim<sup>1</sup>;
3. [Reserved];

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<sup>1</sup> Revised January 2008.

4. [Reserved];
5. claims of a non-member (other than those claims required to be arbitrated under Rule 600.B) against a member that relate to or arise out of employment on the trading floor;
6. claims by or against an entity whose majority ownership is held by Exchange members and whose principal business relates to activity on or at the Exchange, where the dispute has a material connection to the business or purpose of the Exchange, provided such entity has consented to arbitration of the dispute at the Exchange within 20 days of receipt of a claim; and
7. at the discretion of the Chief Regulatory Officer, any claim involving the interests of the Exchange, its members, their business relations or commodity futures trading in general not otherwise arbitrable under these rules, provided the parties have consented to such arbitration.

**600.E. Waiver of Any Objection to Jurisdiction**

Any member or non-member who submits a claim or grievance to arbitration or any member who appeals to a hearing committee of the Board from any panel decision, or who takes any steps therein, shall be conclusively presumed to have voluntarily recognized and agreed to the jurisdiction of the panel or hearing committee of the Board to hear and determine the claim or appeal.

**600.F. Hearing Panel**

Any claim involving only members shall be heard by a Member panel and its decision shall be rendered in accordance with the rules of this Chapter. A Member panel shall mean an arbitration panel consisting of a co-chairman of the Arbitration Committee and five Members as defined in Rule 400.

**601. CUSTOMER CLAIMS AGAINST MEMBERS**

**601.A. Definitions**

1. Customer. Customer shall mean any person, not a member of the Exchange, who places an order or for whose account an order is placed for execution on the Exchange or who otherwise executes a transaction on or subject to the rules of the Exchange.
2. Claim. Claim shall mean any dispute arising out of any transaction on or subject to the rules of the Exchange.
3. Mixed Panel. Mixed Panel shall mean an arbitration panel consisting of a co-chairman of the Arbitration Committee and five Arbitration Committee members, three of whom shall be persons who are non-members and who are not associated with any member of a contract market, or employee thereof, and are not otherwise associated with a contract market.
4. Member. Member as used in this Chapter shall mean 1) members and clearing members of the Exchange, including retired members with floor access privileges and individuals and entities described in Rule 106; 2) associated persons ("APs") and affiliates of clearing members and member firms of the Exchange; 3) guaranteed introducing brokers of clearing members and member firms of the Exchange and their APs; 4) Exchange permit holders; 5) regular firms; and 6) individuals and entities that have agreed in writing to comply with the rules of the Exchange.
5. Punitive Damages. Punitive damages shall mean an award in excess of actual damages suffered. Punitive damages shall be limited to twice the amount of actual damages and may be awarded only to a customer after a determination that there has been willful and wanton misconduct in the execution or handling of an order by a member or an employee acting on behalf of a member.

**601.B. Refusal to Hear Certain Disputes**

A chairman may, but shall not be required to, order that a dispute that is otherwise arbitrable under these rules not be arbitrated hereunder if the dispute requires for adjudication the presence of essential witnesses or third parties over whom the Exchange has no jurisdiction or who are not otherwise available, or if the dispute requires the application of the rules of another exchange.

**601.C. Initiation of Arbitration**

In the event that a complaint is received by the Exchange from a customer, it shall be referred to the Market Regulation Department, which shall inform the customer of alternative dispute settlement forums and, when appropriate, forward to the customer a Consent Form for arbitration at the Exchange. Such form shall inform the customer, by attachment of all pertinent rules, of the customer's rights and liabilities, including costs associated with arbitration, and the option of selecting an arbitration panel consisting of Exchange members or a Mixed Panel to decide the claim and any counterclaims, cross-claims or third-party claims.

A customer who submits a claim for arbitration in accordance with these rules consents thereby to the jurisdiction of the arbitrators and agrees to the arbitration of any counterclaims, cross-claims or third-party claims by any respondent which arise out of the transaction that is the subject of the customer's

claim. The claim shall comply with the requirements of Rule 602, and in the case of a request for punitive damages, the claim shall set forth the facts the customer intends to present in support of the claim that the misconduct was willful and wanton.

The customer shall file a completed Consent Form and deposit the arbitration fee with the Market Regulation Department. Notice shall then be given to the member against whom the claim is asserted, who shall respond to the claim in accordance with Rule 603.

**601.D. Referral to Arbitration Panel or Mixed Panel**

A Customer claim against a member shall be heard by the type of panel selected by the customer and its decision shall be rendered in accordance with the rules of this Chapter. Customer claims (and any counterclaims, cross-claims or third-party claims applicable thereto) that do not exceed \$5,000 and do not include any claim for punitive damages may, in the interests of efficiency and economy, be resolved without hearing. The panel shall render its decision based upon the parties' written submissions and any other relevant information obtained and provided to the panel and the parties at the direction of the chairman and/or the panel.

**FILING PROCEDURES**

**602. INITIATING AN ARBITRATION CLAIM**

A claimant may initiate a claim by submitting a written description of the dispute, a completed Arbitration Cover Sheet and depositing the appropriate arbitration fee with the Market Regulation Department within the period of eligibility for arbitration claims. The written claim shall include a clear description of the facts and circumstances involved in the dispute, including the transaction(s) or agreement(s) complained of, the names of the persons and firms alleged to be responsible for any loss to the claimant, the dates of all acts or omissions relevant to the claim, a detailed calculation of the amount claimed and any other information necessary to fully describe the dispute.

The Market Regulation Department shall reject for filing any claim that does not fully describe the dispute, is clearly filed after the period of eligibility has expired or is clearly not arbitrable at the Exchange. Such a claim will be promptly returned to the filing party with a notice describing the deficiency. A claimant seeking to correct the deficiency and file an amended claim may do so within 30 days of receiving notice describing the deficiency despite any expiration of the period of eligibility prescribed by Rule 609 during that 30-day period. The acceptance for filing by the Market Regulation Department shall not preclude a challenge to the arbitrability of the claim nor create a presumption that the claim is arbitrable.

**603. ANSWERING AN ARBITRATION CLAIM**

Each respondent shall file a written response within 21 days after receipt of the written claim. However, if a party has timely filed a challenge to the arbitrability of the dispute, its response shall be due 21 days after receipt of the written decision confirming the arbitrability of the dispute.

The written answer must admit the claim or describe the respondent's basis for denying liability to the claimant(s). The answer may include an admission or denial of each specific allegation contained in the claim and/or the respondent's narrative description of the facts and circumstances involved in the dispute. A respondent may assert in an answer any defense that would be available in a court of law or equity, including any affirmative defense.

**604. FAILURE TO ANSWER**

A respondent's unexcused failure to file a timely answer shall constitute an admission of the facts alleged in a claim.

**605. COUNTERCLAIMS, CROSS-CLAIMS AND THIRD-PARTY CLAIMS**

A respondent may assert any counterclaim, cross-claim and/or third-party claim to the extent such claim would be allowable as an original claim under these rules and, in response to claims by a customer against a member, the member may assert any counterclaim, cross-claim and/or third-party claim arising out of the same transaction or incident that is the subject of the customer's claim. Each respondent must file any counterclaim, cross-claim or third-party claim at the same time an answer to a claim is due. Initiating counterclaims, cross-claims, third-party claims and answers thereto shall conform to the requirements for initiating and answering original claims.

A respondent who believes that another member may have a claim to any money or property which is the subject of a dispute in arbitration and that the failure of that other member to assert a claim in the pending arbitration could prejudice the interests of the respondent may submit a request to the chairman to compel the participation of the other member. If a member fails to file such claim after

being ordered to assert that claim in the pending arbitration, then notwithstanding any other rule, that member shall be barred from asserting in the future any claim against the respondent that is based on the same transaction, occurrence or subject.

**606. REVIEW OF ARBITRABILITY**

Any party may file a challenge to the arbitrability of a dispute submitted for arbitration at the Exchange. A party's failure to file a timely challenge to arbitrability shall waive any right to object thereafter to the arbitrability of the dispute.

A challenge to arbitrability by a claimant must be filed no later than 5 days after the claim is submitted for arbitration. A challenge to arbitrability by a respondent must be filed no later than 10 days after the respondent has received notice of the claim. The request must be in writing and state the reasons why the dispute is not arbitrable at the Exchange. Any other party may file a written response in support of or opposition to the challenge no later than 10 days after receiving notice of the challenge to arbitrability.

The chairman may decide the arbitrability of a dispute based on his consideration of the written submissions of the parties. The chairman's decision shall be final and is not appealable.

**607. CONSOLIDATION OF ARBITRATION DISPUTES**

If a chairman receives notice that two or more arbitration disputes pending at the Exchange are related, the chairman may order that any or all of the disputes be consolidated for purposes of conducting a hearing on the disputes. In determining whether to consolidate the disputes the chairman may consider the efficiencies of consolidation as well as the burdens and benefits to the parties in consolidating the disputes.

**608. WITHDRAWAL OF CLAIMS**

- A. A party may voluntarily withdraw its claim, counterclaim, cross-claim or third-party claim without prejudice at any time before an answer thereto has been filed by notifying the Market Regulation Department in writing of such withdrawal.
- B. After an answer to any claim, counterclaim, cross-claim or third-party claim has been filed, the claimant seeking to withdraw the claim, counterclaim, cross-claim or third-party claim must submit to the chairman a written request to withdraw with prejudice or upon such terms and conditions as may be imposed by the chairman.
- C. A withdrawal with prejudice under this rule shall bar the claimant from re-filing any claim based on the same acts, transactions or omissions as the dismissed claim.

**609. PERIOD OF ELIGIBILITY FOR ARBITRATION**

An arbitration must be initiated within two years of the date the claimant knew or should have known of the dispute on which the claim is based, except that claims filed pursuant to Rule 600.C. must be submitted within 10 days of receiving notice that the Exchange has refused to compensate the claimant for the claimed loss.

Counterclaims, cross-claims and third-party claims must be submitted no later than the date on which the answer is due.

**610. PARALLEL PROCEEDINGS**

No claim will be accepted for arbitration at the Exchange if the Market Regulation Department receives notice that another arbitration, reparations action or civil court proceeding based on the same act, transaction or omission as the arbitration claim is pending at the time of filing.

No claim, counterclaim, cross-claim or third party-claim will be accepted for arbitration against a respondent if the Market Regulation Department has received notice that a stay exists due to the pendency of any bankruptcy proceeding against that respondent. If such a stay arises after a claim is accepted for arbitration or if the Market Regulation Department subsequently learns that such a stay is pending, the claim shall be dismissed without prejudice as to each respondent who is the subject of the stay. Nothing in this rule shall prevent a claim in arbitration from proceeding against any remaining respondent.

**PRE-HEARING PROCEDURES**

**611. REQUESTS FOR DOCUMENTS, INFORMATION OR TESTIMONY**

- A. The initial schedule for document requests by parties and responses will be set by the Market

Regulation Department. The chairman may require any member, or any person employed by or associated with a member, to produce relevant documents in his possession or control at any time after a claim has been filed.

Upon the failure of a party or member to voluntarily produce relevant documents in its possession or control upon request by a party, the party seeking the documents may submit a written request to the chairman for an order compelling the production of such documents.

1. Any request for an order compelling production of documents must:
    - a. identify each document or type of document sought with as much specificity as possible;
    - b. explain the relevance of each document or type of document sought; and
    - c. include a representation that the requesting party has attempted to obtain the documents from the responding party before resorting to a request to the chairman.
  2. The party or member against whom an order compelling production is sought shall:
    - a. produce copies of the requested documents to the requesting party and the Exchange; or
    - b. represent in writing that the documents are not in his possession or control and explain the basis for such representation, and, if applicable, identify who is in possession or control of the requested documents; or
    - c. object in writing to a request and provide the basis for each objection.
- B. In connection with any claim, counterclaim, cross-claim or third-party claim that seeks relief in excess of \$50,000, any party may seek leave from the chairman to serve written requests for information on any other party. The chairman shall have discretion to determine whether and under what circumstances such requests may be permitted.
- C. The chairman may require any member, or any person employed by or associated with a member, to appear and to testify at a hearing.
- D. Whenever such production or appearance results from the request of a party, all reasonable costs and expenses incurred shall be borne by the party making the request, unless directed otherwise by the panel. A party who incurs costs and expenses recoverable under this rule may, no later than the close of the last hearing date in the matter, submit an application to the panel for such costs and expenses. Such application shall contain a detailed explanation of amounts claimed. The panel may grant or deny all or any portion of the application.
- E. Any member or employee thereof failing to appear, testify, produce documents or provide information in accordance with this rule may be charged with a violation of Rule 432.

## **612. DOCUMENTS AND WITNESSES TO BE PRESENTED AT HEARING**

No later than 10 business days prior to the first scheduled hearing, each party must provide every other party and the Exchange with copies of all documents that the party intends to offer into evidence and a list of the names of all witnesses, including party-witnesses, who the party intends to call at the hearing in support of a claim or defense. Parties are not required under this rule to provide copies of those documents that they may use, or to identify any witnesses whom they may call, only in cross-examination or rebuttal.

## **613. ADDITIONAL PROCEDURES**

The chairman may establish any procedures not otherwise contemplated by these rules necessary to establish a just, equitable and efficient method of resolving a particular dispute, except that the chairman may not decide a motion to dismiss a claim, as motions to dismiss are not permitted under these rules.

## **HEARINGS**

### **614. ARBITRATION PANEL**

#### **614.A. Appointment of Arbitration Panel**

The Market Regulation Department shall select a panel of arbitrators from the Exchange's Arbitration Committee to hear and decide a dispute. The panel shall consist of five arbitrators and one chairman.

#### **614.B. Requests to Remove an Arbitrator**

1. Each party may request the removal of any arbitrator(s) from a panel for good cause shown. Such request must be made no later than the start of testimony at the first scheduled hearing. Failure of a party to timely request the removal of any arbitrator(s) will be deemed a waiver of that party's right to any further objection to the arbitrator's participation in the hearing and decision of the

dispute.

2. The chairman, after considering a request to remove an arbitrator, another party's objections thereto and/or the statements of an arbitrator whose removal is sought, may deny the request or excuse the arbitrator. The chairman's decision shall be final and may not be appealed.
3. If an arbitrator is excused prior to the date of the first scheduled hearing, the Market Regulation Department shall select another Arbitration Committee member to replace the excused arbitrator at the hearing. Parties may make any appropriate request for the removal of the replacement arbitrator under this rule.
4. If an arbitrator is excused on or after the date of the first scheduled hearing, the dispute may, at the election of the non-requesting party and with the consent of the chairman be heard and decided by the remaining arbitrators.

## **615. HEARING PROCEDURES**

### **615.A. Chairman**

The panel chairman shall preside over the proceeding and shall make such determinations on relevancy and procedure as will promote a fair and expeditious adjudication of any claim. The chairman may administer oaths or affirmations by witnesses. Upon request of the panel chairman, the Market Regulation Department shall submit any documents to the panel and parties in the Exchange's possession that are relevant and readily available.

### **615.B. Arbitrators**

The arbitration panel shall consider all relevant, probative testimony and documents submitted by the parties. The panel shall be the sole judge of the law and the facts, but if the panel is in doubt as to any questions of law, it may refer the question to Exchange legal counsel for an opinion. The panel shall not be bound by the formal rules of evidence. The final decision of the panel shall be by majority vote of the arbitrators, and the chairman shall vote only to resolve a tie.

### **615.C. Parties and their Representatives**

Each party and his representative has the right to examine all relevant documents prior to and during the hearing, to present all relevant evidence in support of a claim or defense or as rebuttal to a claim or defense, and to question during the hearing witnesses presented in connection with a claim or defense. An entity may have one corporate representative of the entity, in addition to any counsel of record, attend the arbitration hearing. Such corporate representative will not be precluded from testifying in the matter.

### **615.D. Witnesses**

All testimony offered to the panel will be under oath or affirmation. Witnesses will be permitted in the hearing room only while providing testimony to the panel. Witnesses shall testify in person at the hearing, except that for good cause shown and in the discretion of the chairman, a witness may be allowed to testify by telephone or other appropriate means.

### **615.E. Hearing Record**

An audio recording of the proceeding shall be made and maintained until the decision becomes final. A verbatim record of such recording shall not be transcribed unless requested by a party, who shall bear the cost of transcription.

## **DECISIONS**

## **616. AWARDS**

### **616.A. Decision by Panel**

After a hearing, or, on customer claims that do not exceed \$5,000 upon consideration of the pleadings and other relevant information, the arbitration panel shall issue a written decision signed by the panel chairman and at least a majority of the panel. The panel may decide any matter in controversy and issue any order the panel deems necessary to fully resolve the dispute. The Market Regulation Department shall promptly serve copies on all parties. A monetary award made by the panel may include the following:

1. actual damages;
2. interest thereon;
3. punitive damages of no more than two times the amount of actual damages in accordance with Rule 601.A.5.;
4. the arbitration fee incurred by a prevailing party, or a portion thereof; and

5. all or any portion of the administrative costs of the proceeding and any other reasonable and necessary expenses, including, but not limited to, attorneys' fees (a) incurred by a party by reason of another party's frivolous or bad faith claim, defense, or conduct during the arbitration or (b) where a statutory or contractual basis exists for awarding such fees. Requests for attorneys' fees and costs incurred in the arbitration proceeding must be raised in the proceeding or they are waived.

**616.B. Decision by the Chairman**

The chairman may order a party who fails to prosecute or defend a claim to pay to the Exchange all or a portion of its administrative costs incurred in connection with the arbitration claim.

**616.C. Limitations on Monetary Awards**

Monetary awards in claims filed pursuant to Rule 621 shall be limited as set forth in Rule 578.

**617. CORRECTION OF AWARD**

Any party may, within three days after receipt of the notice of decision, request the arbitration panel to modify or correct its decision where there has been an obvious material miscalculation or misdescription or where the notice is imperfect in a matter of form not affecting the merits of the dispute or decision.

**618. SATISFACTION OF AWARD<sup>1</sup>**

A party directed to pay an award shall submit payment of the amount due directly to the party receiving the award. An arbitration award must be satisfied within 15 days of receipt of the notice of decision. If a request is made to correct an award pursuant to Rule 617, the award must be satisfied within 15 days of receipt of the corrected notice of decision.

A party making payment must submit proof of payment to the Market Regulation Department no later than the business day following payment. An individual member who fails to provide proof of payment within the time prescribed will forfeit the privileges of access to the trading floor, access to the Globex trading platform and preferred fee treatment until proof of payment has been provided. An entity member that fails to provide proof of payment within the time prescribed will forfeit preferred fee treatment for its proprietary trading. Any member that fails to pay an arbitration award within the time prescribed may be subject to sanctions pursuant to Rule 432.R.

## **APPEALS**

**619. APPEAL<sup>2</sup>**

Any decision rendered in a dispute among members resulting in a non-cash award or involving a claim, counterclaim, cross-claim or third-party claim that sought a recovery over \$10,000 may be appealed to a hearing committee of the Board. All other decisions rendered by an arbitration panel are final and may not be appealed. In order to appeal a decision, a party must, within three business days of receipt of the notice of decision, file with the Market Regulation Department a written notice stating the grounds for the appeal based upon the standards set forth in Rule 620 and deposit the applicable fee established by the Exchange. Within 15 days of receipt of the notice of decision, the appellant must deposit with the Market Regulation Department a cashier's or certified check payable to CME Group in the amount of any monetary award against such appellant.

Failure to timely comply with these requirements for appeal, when applicable, shall constitute a waiver of any right to appeal and render the arbitrators' decision final and binding.

Within 15 days after filing a notice of appeal, the appellant shall file with the Market Regulation Department any argument and any documents or information that the appellant intends to use in support of the appeal. The appellee shall have 15 days thereafter to file whatever documents or information he intends to rely upon in opposition to the appeal. An extension beyond the 15-day filing period may be granted by the Market Regulation Department upon a showing of good cause. In the case of a non-cash award, the filing of the notice of appeal shall not stay the decision appealed from unless the panel from which the appeal is taken or the Chief Regulatory Officer specifically directs that the decision be stayed.

The appeal shall be heard by a hearing committee of the Board, and the matter shall be heard within 60 days of the end of the appellee's filing period, unless the Market Regulation Department or the chairman of the hearing committee determines that good cause for an extension has been shown. The hearing

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<sup>1</sup> Revised July 2008.

<sup>2</sup> Revised July 2008.

committee shall consist of three directors appointed by the Chairman of the Board, one of whom the Chairman of the Board shall designate as chairman of the hearing committee. No director may serve on a hearing committee if he has a personal or financial interest in the matter under consideration. A party may strike any member of the hearing committee for good cause shown as determined by the Chief Regulatory Officer, in which event that director shall be excused from hearing the matter. The Chairman of the Board shall then select an alternate participant from the Board. Any meeting of the hearing committee shall require the presence of each director appointed to the committee and shall be conducted by the chairman of the hearing committee. The parties may, upon unanimous consent, waive the right to hearing, and the hearing committee may consider the matter based solely on the parties' written submissions.

## **620. STANDARDS AND PROCEDURES FOR REVIEW UPON APPEAL**

In the following cases, the hearing committee may enter an order amending or vacating the award of the arbitration panel:

- A. Where the award was procured by corruption, fraud or undue means;
- B. Where there was evident partiality or corruption on the part of any of the arbitrators or the chairman;
- C. Where the arbitrators were guilty of misconduct in refusing to hear relevant evidence; or of any other behavior by which the rights of any party have been prejudiced;
- D. Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the dispute submitted was not made; or
- E. Where the arbitrators acted in manifest disregard of the applicable law, including Exchange rules.

The hearing committee shall consider only the record made before the panel and any other evidence submitted by the parties relevant to A. through E. above. In the event that the hearing committee determines to vacate the award, the matter shall be resubmitted to a new panel of arbitrators for a rehearing. In the event that the hearing committee amends the award or denies the appeal, such decision of the hearing committee shall be final and binding.

### **ADDITIONAL CLAIMS**

## **621. CERTAIN CLAIMS AGAINST THE EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES**

### **621.A. General**

All claims arising out of or relating to the following matters shall be arbitrated in accordance with the specific requirements of this Rule 621 and, to the extent not inconsistent with such requirements, the rules of this Chapter:

1. receipt of an incorrect order status or the failure to have received an appropriate order status;
2. the negligence of GCC personnel or any other Exchange staff; or
3. Phantom Orders, as defined in Rule 587.

Nothing in Rules 621 or 622 shall be construed to create a claim against the Exchange, to limit a defense available to the Exchange, or to obviate or modify any limitation of Exchange liability imposed by any other rule.

### **621.B. Initial Liability Claim and Demand for Arbitration**

The initial claim of loss, including a detailed description of any loss suffered, must be made to the Exchange within ten business days of the date of the incident that caused the loss. The Exchange shall have 30 business days to pay or deny the claim in whole or in part. If the Exchange denies the claim in whole or in part, the claimant must file a written demand for arbitration with the Market Regulation Department within ten business days after the Exchange has notified the claimant of such denial. A claimant's failure to pursue its claim within these time limits shall bar any recovery on such claim.

### **621.C. Selection of Arbitration Panel**

The arbitration panel shall consist of three arbitrators selected from a list of arbitrators maintained by the National Futures Association ("NFA"). The Exchange and the claimant shall each select one arbitrator. If the Exchange and the claimant are unable to agree on the third arbitrator, the President of the NFA or his delegate shall choose the third arbitrator.

### **621.D. Related Claims**

All claims arising out of the same system failure, event or alleged negligent act shall, to the extent practicable in the determination of the chairman, be consolidated for a single hearing.

**621.E. Award**

Within 30 days of completion of the hearing, the panel shall issue a written decision. The award shall be limited to the lesser of the actual loss or the loss that would have been incurred if the claimant had used its best efforts to mitigate the loss. Punitive damages, loss of profits, loss of use, and indirect, incidental or consequential damages shall not be awarded. The decision of a majority of the panel shall be final and binding, and there shall be no appeal to the Board of Directors. A party may move, within three business days of the award, that the award be corrected to remedy any miscalculation or misdescription or where the award is otherwise imperfect in a matter of form not affecting the merits of the award.

**621.F. Satisfaction of Award by Exchange**

The Exchange shall satisfy any award against it subject to its limitation of liability rules and the rules respecting proration among claimants where damages allowed for a defined period of time exceed any limit imposed by Exchange rules. The Exchange may delay paying any award until such time as any applicable proration or limitation can be finally calculated.

**622. CLAIMS RELATING TO TRADE CANCELLATIONS OR PRICE ADJUSTMENTS**

**622.A. General**

All claims relating to certain price adjustments or trade busts pursuant to Rule 588.C.3.a., b. and c. shall be arbitrated in accordance with the specific requirements of this Rule 622 and, to the extent not inconsistent with such requirements, the rules of this Chapter. All claims pursuant to Rule 588.C.3.d. shall be arbitrated in accordance with the rules of this Chapter.

**622.B. Initiation of Claim**

Any claim for loss under Rule 588.C.3.a., b. or c. must first be submitted to the Exchange as described in Rule 588.D. Following a denial of liability by a party responsible for a trade bust or price adjustment and by the clearing firm through which the trade was placed as described in Rule 588.D., the dispute shall be referred to arbitration. The Exchange shall administer the arbitration and provide notice to all parties.

The party alleged to have made the trade that caused the trade bust or price adjustment and the clearing firm through which that trade was placed both may be respondents in such arbitration. Any party responsible for a trade bust or price adjustment who is not otherwise subject to arbitration under these rules may voluntarily submit to such arbitration by filing a submission agreement with the Exchange within 21 days of that party's receipt of notice of the referral to arbitration. In the absence of the voluntary submission to arbitration by such party, the arbitration shall proceed solely against the clearing firm through which the trade was placed, and that firm shall be liable for any damages awarded by the panel.

**622.C. Selection of Arbitration Panel**

All claims under Rule 588.C.3.a., b. and c. shall be heard by a Mixed Panel as defined in Rule 601.A.3.

**622.D. Related Claims**

All claims arbitrable under this rule that arise out of a trade bust or price adjustment that was caused by the same incident shall, to the extent practicable in the determination of the chairman, be consolidated in a single arbitration.

**622.E. Award**

Within 30 days of completion of the hearing, the panel shall issue a written decision signed by a majority of the arbitrators.

The total award for a single incident shall not exceed \$500,000. Except as provided below, the claims shall be limited to out-of-pocket losses. If the claimants' allowable losses exceed \$500,000, the amount awarded to each claimant shall be reduced pro rata so that the total award does not exceed \$500,000. Any award shall be made jointly and severally against the respondents. In the event the panel finds the respondent(s) liable for the full amount of the claim (or the capped amount of \$500,000), the panel shall also award the claimants their costs and attorneys fees incurred in connection with arbitrating the claim. Punitive damages, loss of profits, loss of use, and indirect, incidental or consequential damages shall not be awarded. The decision of a majority of the panel shall be final and may not be appealed.

A party may move, within three business days of the award, for an order correcting or modifying the award to remedy any miscalculation or misdescription or where the award is otherwise imperfect in a matter of form not affecting the merits of the award.

## MISCELLANEOUS

### 623. RIGHT TO COUNSEL

Every person is entitled to represent his own interests, be represented by an attorney at law of his choosing and at his own expense who is admitted to practice before the highest court in any State, or be represented by any other non-compensated representative at any stage of an arbitration proceeding at the Exchange. An entity must be represented by an officer or owner of the entity or by an attorney at law.

### 624. COMPUTATION OF TIME

For the purposes of this Chapter, when a period of time is prescribed by a number of days, and not a specific date, the first day counted for the time prescribed is the day after notice is received or other event giving rise to the period of time occurs. Any submission is due or the time to take action shall lapse by the close of business on the last day counted, unless the last day is a weekend or Exchange holiday, in which case the due date shall be the next following day the Exchange is open for business.

For time periods of five days or less only days the Exchange is open for business will be counted. For all other time periods calendar days will be counted.

### 625. SUBMISSIONS TO OR COMMUNICATIONS WITH THE PANEL

Any submission for consideration by a chairman or panel must be submitted to the Market Regulation Department with copies simultaneously served on each other party or designated representative of a party.

After a dispute has been submitted for arbitration, a person filing the claim or required to respond to the claim and any person asked to provide documents, information or testimony in connection with such claim shall not contact any member of a panel appointed to hear the claim for any purpose related to the dispute described by the claim.

### 626. ARBITRATION FEES

Any person submitting an arbitration claim or appealing a decision of an arbitration panel shall remit the applicable fees as may be determined by the Exchange at the time of submission or appeal, in order for such action to be effective.

## ARBITRATION COMMITTEE

### 627. ARBITRATION COMMITTEE

Each member of the Arbitration Committee shall:

- A. be appointed by the Board Chairman on an annual basis;
- B. pledge to the Exchange that he will not publish, divulge, or make known in any manner any facts or information which may come to his attention while performing his duties as a member of the Arbitration Committee, except when reporting to the Board, or to a committee concerned with such information, or when called upon to respond in any judicial or administrative proceeding;
- C. comply with the standards of the American Bar Association-American Arbitration Association's "Code of Ethics for Arbitrators in Commercial Disputes" which the Exchange hereby adopts as its own code of ethics for arbitrators;
- D. pledge to immediately disclose any matter, relationship or interest with any party or the subject of a dispute which may affect the arbitrator's ability to be, or create the appearance that the arbitrator is not, impartial in deliberating and deciding a dispute; and
- E. promptly give notice to the Market Regulation Department of any ex parte communication directed to such Arbitration Committee member which is prohibited by Rule 625.

(End of Chapter 6)