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## Chapter 4

### Enforcement of Rules

#### 400. GENERAL PROVISIONS

The Board has adopted Rules, and from time to time adopts amendments and supplements to such Rules, to promote a free and open market on the Exchange, to maintain appropriate business conduct and to provide protection to the public in its dealings with the Exchange and its Members. The Board has created committees to which it has delegated responsibility for the investigation, hearing and imposition of penalties for violations of Exchange Rules. The Board has also delegated responsibility for the investigation and imposition of penalties for violations of certain Exchange Rules to Exchange staff as set forth in the Rules. The delegation of such responsibility and authority shall in no way limit the authority of the Board with respect to all Rule violations.

For purposes of Chapter 4, the term "Member" 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 and any Person or entity that has been granted cross-exchange trading privileges; 5) employees, authorized representatives, contractors, and agents of a Member in regard to the Exchange related activities of such individuals or entities; 6) regular firms; 7) any Person subject to the jurisdiction of the Exchange pursuant to Rule 418; 8) individuals and entities that have agreed in writing or via electronic signature to comply with the Rules of the Exchange; and 9) CBOT members and other individuals who have access to the Trading Floor.

Members are deemed to know, consent to and be bound by all Exchange Rules. Former Members shall be subject to the continuing jurisdiction of the Exchange, including, without limitation, the application of Rule 432.L., with respect to any conduct that occurred while a Member.

#### 401. THE CHIEF REGULATORY OFFICER

It shall be the duty of the Chief Regulatory Officer to enforce Exchange Rules, and he shall have available to him at all times the resources of the Market Regulation Department and such other Exchange resources as may be necessary to conduct investigations of potential or alleged Rule violations and market conditions. The Chief Regulatory Officer shall have the authority to inspect the books and records of all parties subject to the jurisdiction of the Exchange pursuant to Rule 418 and the authority to require any such party to appear before him and produce his or its books and records and answer questions regarding alleged violations of Exchange Rules, at the time, place and in the manner he designates. The Chief Regulatory Officer may also delegate his authority to staff of the Market Regulation Department.

#### 402. BUSINESS CONDUCT COMMITTEE

##### 402.A. Jurisdiction and General Provisions

The Business Conduct Committee ("BCC") shall have: 1) jurisdiction over any party subject to the jurisdiction of the Exchange, including any Member, with respect to matters relating to business conduct, trading practices, sales practices, trading ethics and market manipulations or other actions that threaten the integrity of the market; 2) the authority, pursuant to Rule 402.C., to take emergency actions; 3) the authority, pursuant to Rule 413.B., to conduct hearings on denials of access pursuant to Rule 413.A., 4) the authority to conduct hearings, proceedings and appeals on all matters over which it has jurisdiction; and 5) the authority to make findings on Rule violations against any party subject to the jurisdiction of the Exchange, including any Member.

The BCC shall act through a Panel ("BCC Panel") comprised of a Hearing Panel Chair, two exchange members or employees of member firms and two non-members. At least one of the exchange members or employees of member firms must be from the designated contract market where the case originated. A quorum of a Panel shall consist of a majority of the panel, but must include at least the Hearing Panel Chair, one exchange member or employee of a member firm from the designated contract market where the case originated and one non-member.

Any Panel that conducts a hearing or proceeding shall consist of panelists who possess sufficiently diverse interests so as to ensure fairness.

No Person shall serve on the BCC unless he has agreed in writing that he will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or any other information which may come to his attention in his official capacity as a member of the BCC, except when reporting to the Board or to a committee concerned with such information or to the Legal Department or Market Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information, records, materials and documents provided to the BCC and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

#### **402.B. Sanctions**

If the Panel finds that a party, including a Member, has violated a Rule, the Panel may take one or more of the following actions:

1. Order the party to cease and desist from the conduct found to be in violation of these Rules or from conduct which would violate the rules of any other exchange owned or controlled by CME Group or the Commodity Exchange Act;
2. Order a party to liquidate such portion of the open contracts in the party's proprietary or customers' accounts, or both, as the Panel deems appropriate to ensure the integrity of Exchange contracts or to ensure an orderly and liquid market;
3. Order a party or its customer to deposit such additional performance bonds with the Clearing House as the Panel deems appropriate to protect the integrity of open contracts;
4. Prescribe such additional capital or other financial requirements as it deems appropriate;
5. Restrict the ability of the party to have a business affiliation with, be employed by or have a financial or beneficial interest in a Member or broker association;
6. Restrict, suspend or terminate the party's access to the Globex platform, the Trading Floor or any other trading or clearing platform or facility owned or controlled by CME Group, or right to supervise the entry of any orders into such platforms by others;
7. Restrict the party's ability to trade, place, enter, accept or solicit orders in any or all products of any exchange owned or controlled by CME Group;
8. Suspend any or all of the Member's privileges of membership as defined in Rule 121;
9. Expel the Member from membership in any exchange owned or controlled by CME Group;
10. Impose a fine upon the party not to exceed \$5,000,000 per violation;
11. Order a party to disgorge any monetary benefit resulting from a violation of an Exchange Rule whether by that party or another party. For purposes of this provision, benefit includes, without limitation, profit, whether realized or unrealized, and avoided losses;
12. Prescribe limitations on positions of the party as may be appropriate, including issuing an Order that no Clearing Member accept new positions on behalf of any such party;
13. Impose advertising restrictions upon the Member pursuant to these Rules;
14. Order a party to make restitution to the account of anyone damaged by the conduct, or to the Clearing Member who has previously made restitution to the account of such party;
15. Order a party or its legal counsel or other representative to pay out of pocket expenses incurred by the exchange in connection with the matter if such party, counsel or representative engaged in vexatious, frivolous or bad faith conduct during the course of an investigation or enforcement proceeding;
16. Revoke the regularity status of a regular firm;
17. Order such action as is necessary to prevent a threat to the contract or violation of the Commodity Exchange Act or Exchange Rules; and/or
18. With the approval of the Market Regulation Department and the party, order any other sanction or undertaking to address or deter the underlying violative conduct pursuant to a supported offer of settlement.

When determining whether to impose any of the sanctions listed above, the Panel may consider any factors determined by the Panel to be relevant in the context of a particular case, including any of the

factors described in the “Sanctioning Guidance to Self-Regulatory Organizations” in the CFTC Policy Statement Relating to the Commission’s Authority to Impose Civil Money Penalties and Futures Self-Regulatory Organizations’ Authority to Impose Sanctions: Penalty Guidelines (1994).

#### **402.C. Emergency Actions**

1. The BCC is authorized to determine whether an emergency exists and whether emergency action is warranted. The following events and/or conditions may constitute emergencies:
  - a. Any actual, attempted, or threatened market manipulation;
  - b. Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;
  - c. Any action taken or considered by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have an impact on trading on the Exchange;
  - d. The actual or threatened bankruptcy or insolvency of any Member or the imposition of any injunction or other restraint by any government agency, self regulatory organization, court or arbitrator upon a Member which may affect the ability of that Member to perform on its contracts;
  - e. Any circumstance in which it appears that a Member or any other Person or entity has failed to perform contracts or is in such financial or operational condition or is conducting business in such a manner that such Person or entity cannot be permitted to continue in business without jeopardizing the safety of customer funds, Members, or the Exchange; and/or
  - f. Any other circumstance which may have a severe, adverse effect upon the functioning of the Exchange, except that declarations of Force Majeure and actions taken with respect to such declarations will be governed by the provisions of Rule 701.
2. In the event that the BCC determines, in the good faith exercise of its sole discretion, that an emergency exists, it may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:
  - a. Suspend, curtail or terminate trading in any or all contracts;
  - b. Restrict, suspend or terminate a party’s access to the Globex platform, the Trading Floor or any other trading or clearing platform or facility owned or controlled by CME Group, or right to supervise the entry of any orders into such platforms by others;
  - c. Limit trading to liquidation of contracts only;
  - d. Impose or modify position limits and/or order liquidation of all or a portion of a party’s account;
  - e. Order liquidation or transfer of positions as to which the holder is unable or unwilling to make or take delivery;
  - f. Confine trading to a specific price range;
  - g. Modify price limits;
  - h. Modify the trading days or hours;
  - i. Modify conditions of delivery;
  - j. Establish the settlement price at which contracts are to be liquidated;
  - k. Require additional performance bond to be deposited with the Clearing House; and/or
  - l. Order any other action or undertaking to address or relieve the emergency.
3. All actions taken pursuant to subsections 1 and 2 above shall be by a majority vote of the Panel members present. The Market Regulation Department shall give appropriate notice of such action. As soon as practicable, the Board and the CFTC shall be notified of the emergency action in accordance with CFTC regulations. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an emergency situation as defined by these Rules.

### **403. CLEARING HOUSE RISK COMMITTEE**

#### **403.A. Jurisdiction and General Provisions**

The Clearing House Risk Committee (or any subcommittee thereof) (collectively, “CHRC”), shall

determine whether an applicant satisfies the qualifications for status as a Clearing Member. The CHRC decision shall be subject to appeal to the Board by an applicant. The CHRC may adopt regulations regarding qualifications for admission to membership in the Clearing House, which regulations, when approved by the Board, shall have the same effect as Rules of the Exchange. The CHRC shall act upon applications for clearing membership and applications for assignment of trading rights for clearing purposes. Applications for clearing membership and for assignment of trading rights for clearing purposes, when approved by the CHRC, shall be effective and thereafter ratified by the Board.

The CHRC shall have at least two co-chairmen, who shall be members of the Board, and at least seven additional individuals, five who shall be Clearing Member representatives and at least one who shall be a non-member.

The CHRC may conduct investigations, issue charges and consider offers of settlement on its own initiative or by referral from Exchange staff, the PCC, or the BCC. Hearings on charges issued by the CHRC will be conducted by the BCC pursuant to the provisions of Rule 408.

If the CHRC determines that a Clearing Member is in a financial condition which jeopardizes or may jeopardize the integrity of the Exchange, the CHRC may, by majority vote:

1. Order the Clearing Member or its customers to deposit such additional performance bond with the Clearing House as deemed appropriate to protect the integrity of open contracts;
2. Prescribe such additional capital or other financial requirements as it deems appropriate;
3. Impose position limits on Clearing Members based on their regulatory capital and such other criteria as it deems appropriate;
4. Suspend a Clearing Member, subject to approval of any two of the following individuals: the Chief Executive Officer, President, President of the Clearing House, Chairman of the Board, Chairman of the CHRC, or Chairman of the Clearing House Oversight Committee;
5. Order the Clearing Member to cease and desist from the conduct found to be contrary to the best interests of the Exchange; and/or
6. Any other circumstance which may have a severe, adverse effect upon the functioning of the Exchange, except that declarations of Force Majeure and actions taken with respect to such declarations will be governed by the provisions of Rule 701.

No Person shall serve on the CHRC unless he has agreed in writing that he will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or entity or any other information which may come to his attention in his official capacity as a member of the CHRC, except when reporting to the Board or to a committee concerned with such information or to the Legal Department, Financial and Regulatory Surveillance Department or Market Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information and documents provided to the CHRC and all deliberations and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

The CHRC shall have jurisdiction to enforce Rules pertaining to the following:

1. Financial integrity of Clearing Members; and
2. Business conduct of and compliance with Exchange Rules by Clearing Members and by any Member who is an officer or a principal or who has assigned his membership on behalf of a Clearing Member, in connection with such Clearing Member's activities, except insofar as jurisdiction over matters relating to conduct, trading practices, trading ethics and certain sales practices of Members, and market manipulations or other actions that threaten the integrity of the market are within the purview of the BCC.

Notwithstanding anything to the contrary herein, the jurisdiction of the CHRC shall not extend to IRS Products or IRS Clearing Members in such capacity when clearing IRS Products or CDS Products or CDS Clearing Members in such capacity when clearing CDS Products. The IRS Risk Committee shall have jurisdiction over IRS Products and IRS Clearing Members in such capacity when clearing IRS Products pursuant to the IRS Risk Committee's charter. The CDS Risk Committee shall have jurisdiction over CDS Products and CDS Clearing Members in such capacity when clearing CDS Products pursuant to the CDS Risk Committee's charter.

#### **403.B. Offers of Settlement**

A respondent that is the subject of an investigation or charges may submit for consideration by the CHRC a written offer of settlement in disposition of such investigation or charges. A respondent may

submit an offer of settlement without admitting or denying the Rule violations upon which the penalty is based; provided, however, that an offer must include a consent to entry of findings by the CHRC regarding the conduct and Rule violations at issue and to the penalty to be imposed.

If the Financial and Regulatory Surveillance or Market Regulation Department does not oppose the respondent's offer of settlement, the respondent's written offer of settlement and the Financial and Regulatory Surveillance or Market Regulation Department's supporting statement shall be submitted to the CHRC for consideration.

If the Financial and Regulatory Surveillance or Market Regulation Department opposes an offer of settlement, the respondent's written offer and the Financial and Regulatory Surveillance or Market Regulation Department's written opposition shall be submitted to the CHRC. The CHRC's consideration of the offer of settlement shall be based upon the written offer and opposition filings, as well as the evidence presented to the CHRC in determining to issue the charges.

The respondent may withdraw his offer at any time prior to final acceptance of the offer by the CHRC. If the CHRC accepts the offer, a written decision setting forth the CHRC's findings and sanction shall be issued, and written notice of the decision shall be given to the respondent.

If the CHRC rejects the offer, the respondent will be notified of the rejection and the offer will be deemed withdrawn. If an offer is withdrawn or rejected by the CHRC, the respondent shall not be deemed to have made any admissions by reason of the offer and shall not otherwise be prejudiced by having submitted the offer. The CHRC chairman may decline to convene the CHRC to consider an offer of settlement.

In submitting an offer of settlement, the respondent waives his right to a hearing and to appeal the CHRC's decision if the offer is accepted; the respondent also waives any claim of bias or prejudgment on the part of the CHRC. If a respondent submits an offer within 14 days of a scheduled BCC hearing on the charges, or after the BCC hearing has begun, the offer shall not stay the BCC hearing unless otherwise determined by the BCC Hearing Panel Chair. Any offer of settlement submitted within 14 days of a scheduled BCC hearing will be directed to the BCC in the first instance. The BCC may determine to accept or reject the offer of settlement, or the BCC may refer the offer of settlement to the CHRC, in which case the CHRC will determine whether to accept or reject the offer.

#### **403.C. Emergency Actions**

1. The CHRC is authorized to determine whether an emergency exists and whether emergency action is warranted. The following events and/or conditions may constitute emergencies:
  - a. Any circumstances which may materially affect the performance of contracts traded on the Exchange, including failure of the payment system;
  - b. Any action taken by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;
  - c. The actual or threatened bankruptcy or insolvency of any Member or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Member of the Exchange which may affect the ability of that Member to perform on its contracts;
  - d. Any circumstance in which it appears that a Member or any other Person or entity has failed to perform contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such Person or entity cannot be permitted to continue in business without jeopardizing the safety of customer funds, Members, and/or the Exchange; and/or
  - e. Any other circumstance which may have a severe, adverse effect upon the functioning of the Exchange, except that declarations of Force Majeure and actions taken with respect to such declarations will be governed by the provisions of Rule 701.
2. In the event that the CHRC determines, in the good faith exercise of its sole discretion, that an emergency exists, it may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:
  - a. Order the Clearing Member or its customer to deposit such additional performance bond with the Clearing House as deemed appropriate to protect the integrity of open contracts;
  - b. Prescribe such additional capital requirements as it deems appropriate;
  - c. Prescribe such position limitations as it deems appropriate;
  - d. Order special or advance performance bond or funds to be deposited with the Clearing House from Members or from longs, shorts or both;

- e. Order such performance bond changes as it deems appropriate; and/or
- f. Order any other action or undertaking to address or relieve the emergency.

All actions taken pursuant to this subsection shall be by majority vote of the committee members present. A Member affected by the action taken shall be notified in writing of such action. As soon as practicable, the Board and the CFTC shall be promptly notified of the emergency action in accordance with CFTC regulations. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an emergency situation as defined by these Rules.

#### **403.D. Appeal of Administrative Fines**

Appeals of administrative fines in excess of \$25,000, imposed pursuant to Rule 852, shall be heard by a panel comprised of a co-chairman and three members of the CHRC. The panel's decision shall be final. The appellant shall be advised of its right to appear at the hearing and of its right to be represented, at its own cost, by legal counsel or a member of the Exchange, other than a member of any Exchange disciplinary committee, a member of the Board or an employee of CME Group. The appellant may present evidence in support of its appeal. The panel shall not set aside, modify or amend the decision appealed from unless the panel determines by a majority vote that the decision was:

1. Arbitrary, capricious, or an abuse of Exchange staff's discretion;
2. In excess of Exchange staff's authority or jurisdiction; or
3. Based on a clearly erroneous application or interpretation of Exchange Rules.

#### **404. PIT COMMITTEE**

The Pit Committee shall have the authority to: 1) participate in the determination of opening and closing ranges in accordance with Rule 546; 2) oversee and enforce changes in prices in accordance with Rule 528 and the Quotation Change Procedures set forth in the Interpretations & Special Notices Section of Chapter 5; 3) resolve pit space disputes; 4) remove unauthorized Persons from the pit; and 5) resolve, by immediate action, all grievances arising from price infractions pursuant to Rule 514 during pit trading.

A Pit Committee member shall not exercise his authority if he or any Person, firm, or broker association with which he is affiliated has a personal, financial, or other direct interest in the matter under consideration. A Pit Committee member shall be deemed to have a financial interest if the decision is likely to have an immediate financial impact on a transaction for his account or an account in which he has an interest or if the decision is likely to impact on liability for filling an order for which he or a Person with whom he has a financial or business relationship was responsible.

#### **405. FLOOR CONDUCT COMMITTEE**

The Floor Conduct Committee shall be responsible for resolving pit space disputes that are not resolved by the Pit Committee. The committee shall conduct summary proceedings for alleged violations of Rule 514. Floor Conduct Committee members shall participate in the resolution of quotation change requests pursuant to the Quotation Change Procedures set forth in the Interpretations & Special Notices Section of Chapter 5. The Floor Conduct Committee shall have jurisdiction to conduct summary proceedings for violations of, and assess penalties in accordance with, Exchange Rules. The procedures contained in Rule 409 shall govern summary proceedings.

#### **406. PROBABLE CAUSE COMMITTEE**

The Probable Cause Committee ("PCC") shall receive and review investigation reports from the Market Regulation Department when the Market Regulation Department has reasonable cause to believe a violation of an Exchange Rule has occurred. The PCC shall act through a Panel comprised of a Hearing Panel Chair, two exchange members or employees of member firms and two non-members. At least one of the exchange members or employees of member firms must be from the designated contract market where the case originated. A quorum of a Panel shall consist of a majority of the Panel, but must include at least the Hearing Panel Chair, an exchange member or employee of a member firm from the designated contract market where the case originated and one non-member. Each Panel shall consist of panelists who possess sufficiently diverse interests so as to ensure fairness.



Production of the investigation report to a PCC Panel shall not constitute a waiver of the protected and/or privileged nature of such report. The Market Regulation Department's presentation to the PCC Panel shall not constitute an ex parte communication as described in Rule 417.

The Market Regulation Department is not required to provide a respondent notice of its intent to appear before the PCC to request charges.

No party or subject of an investigation shall have the right to appear before the PCC or make any written submission on his behalf.

The Panel shall, by majority vote, take one of the following actions:

- A. If the Panel determines that a reasonable basis exists for finding that a violation of an Exchange Rule may have occurred which warrants disciplinary action, it shall issue appropriate charges.
- B. If the Panel determines that no reasonable basis exists for finding that a violation of an Exchange Rule may have occurred it shall direct that no further action be taken.
- C. Direct that the Market Regulation Department investigate the matter further.

The Panel shall direct the Market Regulation Department to give notice of the charges to the respondent in accordance with Rule 407.B.

If the Panel refuses to issue any charge requested by the Market Regulation Department, the Panel shall explain the reason(s) for such refusal in writing. The Market Regulation Department may appeal to the Board any refusal by a Panel to issue those charges requested by the Market Regulation Department as set forth in Rule 411.

No Person shall serve on the PCC unless he has agreed in writing that he will not publish, divulge or make known in any manner, any facts or information regarding the business of any Person or entity or any other information which may come to his attention in his official capacity as a member of the PCC, except when reporting to the Board or to a committee concerned with such information or to the Legal Department or Market Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information, records, materials and documents provided to the PCC and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

#### **407. INVESTIGATION, CHARGING MEMORANDUM AND NOTICE OF CHARGES**

The Market Regulation Department shall investigate potential or alleged Rule violations. Investigations and all information and documents obtained during the course of an investigation shall be treated as non-public and confidential and shall not be disclosed by any party, except as necessary to further an Exchange investigation or as required by law. The Market Regulation Department is authorized to take recorded interviews pursuant to an Exchange investigation. Parties and witnesses being interviewed shall have the right to representation, at their own cost, by legal counsel or anyone other than a member of any Exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation. The failure to appear at a scheduled interview or to answer all of the questions posed during that interview may, in the discretion of the BCC Panel Chair, result in the Person being prohibited from testifying in a subsequent hearing on the matter.

Upon conclusion of an investigation, the Market Regulation Department may issue a warning letter to any party as a result of the investigation. Such letter shall not constitute either the finding of a Rule violation or a penalty.

##### **407.A. Investigation File**

The Market Regulation Department shall maintain a file once an investigation is initiated. The file shall include any materials in the possession of the Market Regulation Department that are relevant to the conduct being investigated.

##### **407.B. Notice of Charges; Opportunity for Hearing**

Where the PCC has issued charges for an alleged Rule violation, the Market Regulation Department shall issue a charging memorandum to the respondent with a brief statement of factual allegations that identifies the charged Rule violation(s). In addition, the Market Regulation Department will send a notice of charges to the respondent. The notice of charges shall set forth the Rule(s) alleged to have been violated, and shall advise the respondent regarding the submission of a responsive answer to each charge in accordance with Rule 407.C. Further, the notice of charges shall advise the respondent

that the matter will be heard by a BCC Panel and of the time and place for the hearing, if known. The respondent shall also be advised of his right to appear personally at the hearing and of his right to be represented, at his own cost, by legal counsel or a member of the Exchange, other than a member of any exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation.

A respondent may waive his right to a hearing at any time after receipt of the notice of charges. A respondent who elects to waive his right to a hearing on the charges will be notified of the date on which the BCC Panel will render its decision. Upon a finding of guilt on any charge, the BCC Panel will promptly determine what penalties, if any, are to be imposed and their effective date. A respondent who has waived his right to a hearing and/or admitted the charges against him will be advised of his right to participate in the hearing solely with respect to the penalty.

#### **407.C. Answer to Charges**

The respondent shall have 21 days after notice to submit a written answer to the charges. The Market Regulation Department and the respondent may agree in writing to an extension of the period of time to submit an answer to such charges. Absent such agreement, upon a showing of good cause, the BCC Hearing Panel Chair may extend the period of time in which the respondent is required to submit his answer. The answer must state that the respondent admits, denies, or lacks sufficient knowledge to admit or deny each charge. A statement of lack of sufficient knowledge shall be deemed a denial. Pursuant to a written request by the Market Regulation Department, any charge not denied in whole or in part by the respondent shall be deemed admitted by the Hearing Panel Chair, and the failure to file a timely answer may be deemed an admission to the charges. If all the charges are admitted, the respondent shall be deemed to waive his right to a hearing on the charges and the BCC Panel shall find that the violations alleged in the notice have been committed. The BCC Panel will determine the penalty, if any, to be imposed at a hearing, due notice of which will be provided to the respondent. The respondent shall be advised of his right to appear personally at the penalty hearing and advised of his right to be represented at his own cost by legal counsel or anyone other than a member of any disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation.

If an answer contains both an admission to one or more charges and a denial of one or more charges, the BCC Panel will consider the penalties which may be imposed for the admitted charges at the same time that the charges denied by the respondent are considered.

#### **407.D. Amendment to Charging Memorandum; Non-Prosecution of Charges**

The issuance of charges shall not prevent the Market Regulation Department from continuing to investigate the activity underlying the charges or investigating other potential violations by the respondent. The Market Regulation Department reserves the right to modify the charging memorandum without the consent of the PCC. Notwithstanding the prior sentence, no charges may be added to the charging memorandum absent the consent of the PCC. The Respondent shall have 21 days from notice of an amended charging memorandum to file an answer to any new or modified charges in the amended memorandum.

The Market Regulation Department may, in its sole discretion, decline to prosecute any one or more of the charges previously issued by the PCC. If the Market Regulation Department declines to prosecute any previously issued charge after the Respondent has received a Notice of Charges, the Market Regulation Department shall provide notice to the Respondent of such decision. Further the Market Regulation Department may, in its sole discretion, resolve a previously issued charge through issuance of a letter of warning.

## **408. CONDUCT OF HEARINGS**

### **408.A. General**

All disciplinary proceedings conducted before a panel of the BCC or before a hearing panel of the Board of Directors (collectively, "Panel") shall be conducted in accordance with the following procedures.

Hearings shall be fair. The respondent shall have the right to appear personally at the hearing and to be represented at his own cost by legal counsel or anyone other than a member of any exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation. The Panel or the Hearing Panel Chair shall have the power to compel any party subject to its jurisdiction, including any Member, to attend, testify and/or produce evidence in connection with the hearing.

**408.B. Pre-Hearing**

## 1. Procedural Matters

Prior to the hearing, but subsequent to the timely filing of an answer, a party charged by the PCC with a violation of an Exchange rule may examine all evidence in the investigation file that is relevant to the violation(s) charged by the PCC and all evidence which is to be relied upon by the Market Regulation Department during the hearing. However, the respondent shall not be entitled to examine protected attorney work product, attorney-client communications or investigative work product, including, but not limited to, the investigation report and any exception reports. The respondent may obtain a copy of all such evidence, and any copying costs shall be the sole responsibility of the respondent. The Market Regulation Department is not required to produce or obtain any documents that are not in its possession. A respondent who seeks documents that are not in the possession of the Market Regulation Department may request the documents from the custodian of such documents. Upon a showing of good cause, the respondent may petition the Hearing Panel Chair, in writing, for an order compelling the production of documents by a custodian, provided that the custodian is subject to the jurisdiction of the Exchange, the custodian has refused voluntarily to provide the documents and the documents are relevant to the charges. The Market Regulation Department or the custodian may object, in whole or in part, to any such petition.

## 2. Appointment of a Panel for a Contested Hearing

The Market Regulation Department shall, in writing, notify the respondent of the names of the individuals originally appointed to the Panel for a contested hearing at least 28 days in advance of the originally scheduled hearing date. Within seven days of such notice, parties to the hearing may request the Hearing Panel Chair to strike any panelist for good cause shown. The Hearing Panel Chair may then excuse such panelist and direct that an alternate panelist be appointed. In the sole discretion of the Panel Chair, the hearing may be conducted with less than a full Panel provided a quorum exists.

In the event any panelist is added, the Market Regulation Department shall provide all parties reasonable notice regarding the new panelist. The addition of a new panelist will not delay the scheduled hearing date unless the panelist is added less than five days in advance of the scheduled hearing and a party can demonstrate good cause for the requested delay.

Notwithstanding the foregoing, any party to a contested hearing may, following the filing of an answer to the charges, request the appointment of a Hearing Panel Chair prior to the time period set forth above for the purpose of resolving pre-trial disputes. The matters that may be raised before the Hearing Panel Chair include, without limitation:

- a. scope and timing of fact discovery;
- b. scope and timing of expert discovery;
- c. allocation of discovery costs;
- d. use and disclosure of demonstratives;
- e. requests to alter timing requirements set forth in these Rules; or
- f. scheduling of the contested hearing

The Hearing Panel Chair may hold a pre-trial conference to address these issues or may, in his discretion, resolve them on written submissions by the parties.

The Hearing Panel Chair shall have the authority to issue non-monetary sanctions against any party or legal counsel or other representative who fails to comply with an Order of the Chair or who engages in vexatious, frivolous or bad faith conduct. Such sanctions may include drawing adverse inferences or excluding legal argument, evidence or other submissions. Sanctions may not include entry of a default judgment. The Hearing Panel Chair must allow both parties to make written submissions on the issue prior to imposing any sanction.

## 3. Submission of Documents and Identification of Witnesses

At least 28 days in advance of a contested hearing, the respondent shall submit to the Market Regulation Department, and the Market Regulation Department shall submit to the respondent, copies of all books, documents, records and other tangible evidence, which each plans to rely on or refer to during its direct case at the hearing, and provide a list of the names and titles of witnesses that each plans to call on its direct case at the hearing. The Panel may refuse to consider any books, records, documents or other tangible evidence which was not made available to, or witnesses whose names and titles were not submitted to, the other party pursuant to this section.

To the extent Market Regulation or the respondent intends to call any expert witness at the hearing then such party shall provide to the other, 28 days prior to the date of the hearing, a summary of the expert's opinions to be offered at the hearing and the basis and/or methodology underlying such opinions. In addition, the expert's credentials (e.g., a *curriculum vitae*) and all documents or other materials on which the expert relied in forming his opinions shall be produced to the other party at the same time. For purposes of this provision, staff in the Market Regulation Department or other CME Group employee shall not be considered experts. The Panel may decline to consider any expert testimony beyond the scope of the submitted summary.

4. Additional Discovery

Absent an order of the Hearing Panel Chair or consent of the parties, no discovery beyond that set forth in Rules 407 and 408 shall be permitted.

5. Motions

The Hearing Panel Chair shall have the authority to decide all procedural and evidentiary matters and all pre-hearing motions, and the Hearing Panel Chair's decision shall be final. Notwithstanding the preceding sentence, no motions to dismiss any or all of the charges or any other dispositive motion may be filed.

Any pre-hearing motion must be submitted in writing to the parties and BCC's counsel at least 21 days in advance of the scheduled hearing. The opposing party shall submit a response, if any, within 7 days of receipt of any pre-hearing motion. No reply papers are permitted. The Hearing Panel Chair, in his sole discretion, may hold oral argument on any motion or may decide any motion on the written submissions of the parties.

**408.C. Offers of Settlement**

A respondent that is the subject of an investigation which has been referred to the Market Regulation Department Enforcement Group for prosecution may submit for consideration by the Panel a written offer of settlement in disposition of such matter. Such submission may be made at any time prior to the Panel commencing deliberations at a contested hearing of the case. No offer of settlement may be submitted by a respondent to the Panel unless the Market Regulation Department supports the offer.

A respondent may submit an offer of settlement without admitting or denying the Rule violations or factual findings upon which the penalty is based; provided, however, that an offer must include a consent to entry of findings by the Panel regarding the conduct and Rule violations at issue, to the penalty to be imposed and to the effective date of the penalty.

The respondent's written offer of settlement and the Market Regulation Department's supporting statement shall be submitted to the Panel for consideration.

The Market Regulation Department shall, in writing, notify the respondent of the names of the individuals originally appointed to the Panel to consider respondent's settlement offer at least seven days in advance of the originally scheduled hearing date. Parties to the hearing may request the Hearing Panel Chair to strike any panelist for good cause shown. The Hearing Panel Chair may then excuse such panelist and direct that an alternate panelist be appointed. In the sole discretion of the Panel Chair, the hearing may be conducted with less than a full Panel provided a quorum exists.

In the event any panelist is added, the Market Regulation Department shall provide all parties reasonable notice regarding the new panelist. The addition of a new panelist will not delay the scheduled hearing date unless the panelist is added less than five days in advance of the scheduled hearing and a party can demonstrate good cause for the requested delay.

A respondent may withdraw an offer of settlement at any time prior to the start of the hearing on the proposed settlement before the Panel. If the Panel accepts the offer, a written decision setting forth the Panel's findings and sanction shall be issued, and written notice of the decision shall be given to the respondent. If the offer of settlement is accepted, the BCC's decision shall be final on the date it is signed by the Hearing Panel Chair and, unless otherwise ordered by the Panel, it shall become effective two business days after it becomes final.

If the Panel rejects an offer of settlement, the respondent will be notified of the rejection and it will be deemed withdrawn. If an offer is withdrawn or rejected by the Panel, the respondent shall not be deemed to have made any admissions by reason of the offer and shall not otherwise be prejudiced by having submitted the offer. No statements made or documents exchanged by the parties solely in the context of a withdrawn or rejected offer of settlement or during any settlement negotiations shall be admissible in any contested hearing.

Any subsequent offers of settlement shall be heard by the same Panel; however, alternate panelists may be appointed in the event of scheduling conflicts. Any contested hearing following an offer of settlement not accepted by the Panel will be heard by a new Panel.

In submitting an offer of settlement, the respondent waives his right to a contested hearing and to appeal the Panel's decision if the offer is accepted; the respondent also waives any claim of bias or prejudice on the part of the Panel.

#### **408.D. Contested Hearings**

The Market Regulation Department shall be a party to the contested hearing and shall present evidence in support of the charged Rule violation(s). The Market Regulation Department and the members of the Panel may question any witness and examine all the evidence stipulated to or presented at the hearing. The respondent shall be entitled to appear personally, testify, produce evidence, call witnesses on his behalf and cross-examine any witness. The Hearing Panel Chair may exclude any witness, other than a party or other essential Person, during the opening statements or during the testimony of any other witness.

The Market Regulation Department bears the burden of establishing the basis for a finding of guilt on any charge by a preponderance of the evidence. Formal rules of evidence shall not apply. The parties may offer such evidence as is relevant to the charges at issue. The Hearing Panel Chair shall determine the admissibility of evidence offered and may exclude evidence that he deems irrelevant or cumulative. The Hearing Panel Chair has the discretion to vary the structure and presentation of evidence to make the hearing as efficient as possible. The parties may submit stipulated facts in order to make the hearing more efficient.

The hearing may proceed in the absence of a respondent who, after due notice, fails to appear. However, the failure to appear is not a default if the respondent has filed a written answer denying the charges issued. Accordingly, Market Regulation still bears the burden of proof and must present evidence to meet that burden.

All testimony and documents produced in connection with a disciplinary hearing shall be deemed non-public and confidential and shall not be disclosed except in connection with proceedings resulting from that hearing or as required by law. A recording or other substantially verbatim record of the hearing shall be made by Market Regulation or a court reporter hired by Market Regulation and become part of the record of the proceeding. If a respondent requests a transcript, he shall be solely responsible for the cost of producing the transcript. No other means of recording the proceedings will be permitted absent written agreement of the parties or pursuant to an order of the Hearing Panel Chair.

A majority vote of the Panel is required for a finding of guilt. A respondent that is found not guilty shall not again be charged with or tried for the same underlying conduct. In the event of a finding of guilt, the Panel, in a separate sanctioning phase, must allow both parties to present arguments and information regarding the appropriate nature and amount of a sanction prior to determining such sanction. In the absence of exceptional circumstances, as determined by the Hearing Panel Chair, the sanctioning phase shall proceed immediately upon the conclusion of the evidence and determination of the committee.

The BCC's decision shall be final on the date it is signed by the Hearing Panel Chair. The BCC's decision shall become the final decision of the Exchange after the appeal period has lapsed.

#### **408.E. Decisions**

Promptly following a hearing, BCC Panel shall issue to the Market Regulation Department and to respondent a written decision of the Panel's findings, which shall include: the notice of charges (or a summary thereof); the answer to the charges, if any (or a summary thereof); a brief summary of the evidence produced at the hearing; a statement of findings and reasoned conclusions with respect to each charge, including the specific Rules which the respondent is found to have violated; a declaration of any penalty imposed and the effective date of such penalty; and the availability, if any, of an appeal of the decision within the Exchange or to the Commodity Futures Trading Commission.

### **409. SUMMARY PROCEEDINGS BEFORE THE FLOOR CONDUCT COMMITTEE**

#### **409.A. Jurisdiction**

A member of the Floor Conduct Committee or a designated representative of the Market Regulation Department shall have the authority to issue charges against an individual with respect to trading infractions as set forth in Rule 514. A panel of the Floor Conduct Committee shall have authority to conduct summary proceedings with respect to charges under Rule 514.

Charges against an individual shall be issued by filing the appropriate forms with the Market Regulation Department. The Market Regulation Department will then serve the respondent with a copy of the charges.

#### **409.B. Selection of the Panel**

For proceedings before the Floor Conduct Committee, the Chief Regulatory Officer or his designee, in consultation with a Floor Conduct Committee Co-Chairman, shall select a panel consisting of three additional members of the Floor Conduct Committee, which may include other Co-Chairmen of the committee. The Chief Regulatory Officer shall endeavor to rotate the members serving on the panels.

No panelist may serve on the particular panel if he or any Person, firm, or broker association with which he is affiliated has a personal, financial, or other direct interest in the matter under consideration.

#### **409.C. Conduct of Summary Proceedings**

A summary proceeding before the Floor Conduct Committee shall be conducted in a fair and impartial manner.

A summary proceeding before the Floor Conduct Committee shall take place as soon as practicable after the issuance of charges. The proceeding will not be recorded. The respondent shall be entitled to appear personally and answer the charges issued. Respondents and witnesses may not be represented by counsel at a summary proceeding. However, an employee without membership privileges who is a respondent may be represented by a single representative of his employer. A panel shall decide by a majority vote whether the individual is guilty of the violation or offense charged. If the accused individual is found guilty, a panel may impose fines in accordance with Exchange Rules. A witness who fails to appear at a summary proceeding after being directed to do so by the Chairman of the panel or by staff may be charged with a violation of Rule 432.

If a panel of the Floor Conduct Committee, by a majority vote, decides that the matter is of major importance or might warrant a penalty in excess of its own authority, the Chairman of the Panel shall refer the matter to the PCC and shall inform the individual of this referral in writing.

#### **409.D. Appeals**

An individual found guilty of an offense who receives a fine greater than \$5,000 may, within 10 days of the decision, file a written appeal of the decision with the Market Regulation Department. A written appeal that fails to specify the grounds for the appeal and the specific error or impropriety of the original decision shall be dismissed by the Chief Regulatory Officer. The Hearing Panel Chair may also allow the parties to file briefs in support of or in opposition to an appeal. The appeal shall be heard by a Panel of the BCC ("BCC Panel") whose decision shall be the final decision of the Exchange and not subject to appeal pursuant to Rule 411. The appellant shall be entitled to be represented by counsel, appear personally before the BCC Panel and present evidence that he may have in support of his appeal. The BCC Panel shall not set aside, modify or amend the appealed decision unless it determines, by majority vote, that the decision was:

1. Arbitrary, capricious, or an abuse of the committee's discretion;
2. In excess of the committee's authority or jurisdiction; or
3. Based on a clearly erroneous application or interpretation of Exchange Rules.

#### **410. [RESERVED]**

#### **411. APPEAL TO A HEARING PANEL OF THE BOARD OF DIRECTORS**

The Market Regulation Department may appeal to a hearing panel of the Board ("Appellate Panel") regarding a final decision of or sanction imposed by the BCC, or any refusal by the PCC to issue those charges requested by the Market Regulation Department, by filing a written notice of appeal with the Exchange Legal Department within 10 business days after receiving notice of such decision, sanction or refusal. A copy of such notice of appeal shall be provided to the Respondent at the time it is filed with the Legal Department, unless it is an appeal of the PCC decision not to issue charges in which case no notice is required. Filing of a notice of appeal by the Market Regulation Department shall stay any decision that is appealed unless the Chairman of the Board or the BCC Hearing Panel Chair from which the appeal is taken specifically directs that the decision is not stayed pending appeal.

A Member found guilty of an offense or otherwise aggrieved by a final decision of the BCC, may appeal to an Appellate Panel provided that the decision assesses a monetary sanction (including a fine, disgorgement or restitution) greater than \$25,000 and/or an access denial or suspension of any

membership privileges for greater than ten business days against the Member. The notice shall be filed in writing with the Exchange's Legal Department within 10 business days after Notice of any such decision. A copy of such notice shall be provided to the Market Regulation Department at the time it is filed with the Legal Department. Filing of a notice of appeal by a Member shall stay the decision appealed unless the Market Regulation Department objects to such a stay and the Chairman of the Board or the BCC Hearing Panel Chair from which the appeal is taken specifically directs that the decision is not stayed pending appeal.

A notice of appeal must specify the grounds for the appeal and the specific error(s) or impropriety of the original decision. Upon receiving the notice of appeal the parties, in conjunction with the Exchange Legal Department shall determine a briefing schedule for the appeal. If agreement on the schedule cannot be reached the Appellate Panel Chair shall set the schedule. The Appellate Panel Chair shall determine, in his sole discretion, whether to hold oral argument on the appeal or whether to decide the appeal on the papers submitted by the parties.

The appellate hearing shall be limited to the record from the appealed proceeding. The Appellate Panel shall not entertain any new evidence or new legal theory not raised in the prior proceeding except upon a clear showing by the appellant that such new evidence or new legal theory did not exist or was not ascertainable by due diligence at the time of the proceeding, and that there was insufficient time within the intervening period prior to the hearing of the Appellate Panel for the appellant to bring such new evidence or legal theory to the attention of the BCC or the PCC, as applicable.

The Appellate Panel shall review the investigation report in connection with the appeal of a refusal by the PCC to issue those charges requested by the Market Regulation Department.

No member of the Board may serve on a particular Appellate Panel if he participated on the PCC Panel that issued, or considered issuing, the charges, or on the BCC Panel that issued the decision, or if he has a personal, financial, or other direct interest in the matter under consideration or is a member of the same broker association as the respondent or potential respondent.

The Chairman of the Board shall appoint a director to serve as the Appellate Panel chairman, who shall conduct the hearing, and two additional directors to serve on the Appellate Panel. One of these directors shall be a non-member. Any party to the appeal may request the Chairman of the Board to strike any director for good cause shown. The Chairman of the Board may then excuse such director and shall then select an alternate director from the Board. An Appellate Panel shall consist of directors that possess sufficiently diverse interests so as to ensure fairness.

The Appellate Panel shall not set aside, modify or amend the appealed decision or the refusal to issue charges unless it determines, by a majority vote that the decision or the refusal to issue charges was:

- A. Arbitrary, capricious, or an abuse of the committee's discretion;
- B. In excess of the committee's authority or jurisdiction; or
- C. Based on a clearly erroneous application or interpretation of Exchange Rules.

In the case of an appeal of a disciplinary decision, the Appellate Panel shall promptly issue a written decision which shall include a statement of findings with respect to the decision from which the appeal was taken and the Appellate Panel's determination that such initial decision is affirmed, set aside, modified or amended in whole or in part and, with respect to any initial decision that is not affirmed in whole, the Appellate Panel's determination of the order or penalty to be imposed, if any. The decision of the Appellate Panel shall be deemed a decision of the Board and shall be a final decision of the Exchange. If a disciplinary sanction results from the decision of the Appellate Panel, the party against whom such sanction was imposed shall be notified of its potential ability to appeal to the Commodity Futures Trading Commission.

In the case of an appeal by the Market Regulation Department of a decision by the PCC not to issue those charges requested by the Market Regulation Department, the Appellate Panel shall either affirm or set aside the decision of the PCC. If the decision is set aside, the Appellate Panel shall issue the charges it deems appropriate or remand the matter to the same Panel of the PCC for the issuance of charges. If the decision is affirmed, the Appellate Panel shall direct that no further action be taken and such decision shall be deemed a decision of the Board and shall be a final decision of the Exchange.

This Rule shall not apply to appeals of Arbitration Committee decisions, which shall be governed by the Rules contained in Chapter 6.

## 412. SUMMARY ACTIONS

In cases of action taken against a Member pursuant to Rules 976 or 977, the Member affected shall be notified in writing of such action. The notice shall state: the action taken; the reason for the action; and the effective time, date and duration thereof.

The Member may, within two business days following receipt of notice of action taken, request a hearing before a hearing panel of the Board ("Panel"). The hearing shall be conducted within 60 days of such request, in accordance with the requirements of Rule 408, unless the Hearing Panel Chair determines that good cause for an extension has been shown, but shall not stay any action taken pursuant to Rules 976 or 977.

Following the hearing, if any, the Panel shall cause to be prepared a written decision containing: a description of the summary action; the reasons for such action; a description of the evidence produced at the hearing; findings and conclusions; a determination that the summary action should be affirmed, set aside, modified or amended and the reasons therefor; and the effective date and duration, if any, of subsequent or continuing actions. The Panel shall not set aside, modify or amend the summary action taken against a Member unless it determines, by a majority vote, that the summary action taken was:

- A. Arbitrary, capricious, or an abuse of the committee's discretion; or
- B. In excess of the committee's authority or jurisdiction.

#### **413. SUMMARY ACCESS DENIAL ACTIONS**

##### **413.A. Authority to Deny Access**

The Chief Regulatory Officer or his delegate, upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the Exchange, may order that: 1) any party be denied access to any or all CME Group markets; 2) any party be denied access to the Globex platform; 3) any party be denied access to any other electronic trading or clearing platform owned or controlled by CME Group; or (4) any Member be immediately removed from any trading floor or facility owned or controlled by CME Group.

##### **413.B. Notice**

Promptly after an action is taken pursuant to Rule 413.A., the party shall be informed of the action taken, the reasons for the action, and the effective date, time and the duration of the action taken. The party shall be advised of his right to a hearing before a panel of the BCC ("Panel") by filing notice of intent with the Market Regulation Department within 10 business days of receiving notice of the action taken.

##### **413.C. Hearing**

Parties shall have the right to representation, at their own cost, by legal counsel or anyone other than a member of any Exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation. The Panel shall conduct a de novo hearing solely on the issue of the denial of access in accordance with the procedures in Rule 408.A. Filing of a notice of intent pursuant to Rule 413.B. shall not stay the Chief Regulatory Officer's decision to deny access.

##### **413.D. Duration of Access Denial**

Any decision to deny access pursuant to Rule 413.A. or Rule 413.C. shall not remain in effect for more than 60 days unless the Chief Regulatory Officer or his delegate, upon further consideration of the circumstances that resulted in a prior access denial action, provides written Notice to the party that his access will be denied for an additional period of time not to exceed 60 days and the Notice comports with the provisions of Rule 413.B. Any subsequent extension of the access denial pursuant to this Rule must be mutually agreed to by the party and the Chief Regulatory Officer or his delegate. In the absence of such mutual agreement, the Market Regulation Department may petition the BCC to take emergency action pursuant to Rule 402.C. At any time, a Member may petition the BCC to reconsider an access denial pursuant to this Rule based upon materially changed circumstances.

#### **414. INVESTIGATIONS BY OTHER SELF-REGULATORY ORGANIZATIONS**

If a self-regulatory organization that is a party to an information sharing agreement with the Exchange requests assistance in connection with an investigation, the Chief Regulatory Officer may direct a party subject to the jurisdiction of the Exchange pursuant to Rule 418 to submit to an examination by the requesting self-regulatory organization and to produce information pertinent to that investigation. The request for assistance shall describe the investigation, explain why Exchange assistance is necessary



and describe the scope of assistance sought. An order directing a party subject to the jurisdiction of the Exchange to submit to an examination shall be issued unless the Chief Regulatory Officer determines that such order would not be in the best interests of the Exchange. An examination pursuant to such order shall be conducted according to Exchange Rules and shall be conducted on Exchange premises under the direction of Exchange staff. At the discretion of the Chief Regulatory Officer, representatives of the requesting self-regulatory organization may observe and participate in the examination. Failure to comply with an order issued under this Rule shall be an offense against the Exchange.

#### **415. INFORMATION-SHARING AGREEMENTS**

The Chief Executive Officer or the President, or their delegates, are authorized to provide information:

- A. to an exchange, clearing organization, domestic or foreign regulatory agency or member of the Intermarket Surveillance Group (“ISG”) that is a party to an information sharing agreement with the Exchange, in accordance with the terms and conditions of such agreement; or
- B. as directed by the Commission pursuant to CFTC Regulation 38.159.

#### **416. CONFLICTS OF INTEREST**

##### **416.A. Abstention Requirements**

A member of a charging, adjudicating, or appeal committee or panel must abstain from participating in any matter where such member:

1. Is a witness, potential witness, or a party;
2. Is an employer, employee, or co-worker of a witness, potential witness, or a party;
3. Is associated with a witness, potential witness, or a party through a broker association as defined in Exchange Rules;
4. Has any significant personal or business relationship with a witness, potential witness, or a party, not including relationships limited to (a) executing futures or options transactions opposite each other, or (b) clearing futures or option transactions through the same clearing member; or
5. Has a familial relationship to a witness, potential witness, or a party.

##### **416.B. Disclosure of Relationship**

1. Prior to the consideration of any matter involving a subject, each member of a charging, adjudicating, or appeal committee or panel must disclose to the appropriate Exchange staff whether he or she has one of the relationships listed in Rule 416.A. above with the subject.
2. In its sole discretion, Exchange staff shall determine whether any member of the committee or panel is required to abstain in any matter.

#### **417. PROHIBITED COMMUNICATIONS**

##### **417.A. Ex Parte Communications**

Unless on notice and opportunity for all parties to participate:

1. No subject or respondent (or any counsel to or representative of a subject or respondent) or the Financial and Regulatory Surveillance Department (or any counsel to or representative of the Financial and Regulatory Surveillance Department) or the Market Regulation Department (or any counsel to or representative of the Market Regulation Department) shall knowingly make or cause to be made an ex parte communication relevant to the merits (which shall not include scheduling and procedural matters) of an investigation or a proceeding to a member of a charging, adjudicatory, or appeal committee or panel with respect to that matter or proceeding.
2. No member of a charging, adjudicating, or appeal committee or panel that is participating in a decision with respect to an investigation or a proceeding shall knowingly make or cause to be made to a subject or respondent (or any counsel to or representative of a subject or respondent) or the Financial and Regulatory Surveillance Department (or any counsel to or representative of the Financial and Regulatory Surveillance Department) or the Market Regulation Department (or any counsel to or representative of the Market Regulation Department) an ex parte communication relevant to the merits (which shall not include scheduling and procedural matters) of that matter or proceeding.

**417.B. Communications with Panelists**

No Person shall attempt to influence disciplinary matters pending before a charging, adjudicatory, or appeal committee by discussing, or attempting to discuss, such pending matters with a member of such committee or any member of the Board.

**417.C. Disclosure**

Any Person who receives, makes or learns of any communication which is prohibited by this Rule shall promptly give notice of such communication and any response thereto to the Market Regulation Department or the Financial and Regulatory Surveillance Department, as applicable, and all parties to the proceeding to which the communication relates. A Person shall not be deemed to have violated this Rule if the Person refuses an attempted communication concerning the merits of an investigation or proceeding as soon as it becomes apparent that the communication concerns the merits.

**418. CONSENT TO EXCHANGE JURISDICTION**

Any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the Rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes.

**419. CONTRACT MODIFICATION**

All deliveries must conform to government regulations in force at the time of delivery, and all options must conform to government regulations in force at the time of exercise. Unless specifically provided otherwise in the applicable product chapter, if any duly authorized U.S. government agency or body with appropriate jurisdiction issues an order, ruling, directive or law that conflicts with the requirements of these Rules, such order, ruling directive or law shall be construed to take precedence and become part of these Rules, and all open and new contracts shall be subject to such government orders.

**420. – 431. [RESERVED]****432. GENERAL OFFENSES**

It shall be an offense:

- A. to have an interest in, operate or knowingly act on behalf of a bucket-shop, or knowingly make any transaction with a bucket-shop;
- B.
  1. to engage, or attempt to engage, in fraud or bad faith;
  2. to engage in conduct or proceedings inconsistent with just and equitable principles of trade;
- C. to engage in dishonest conduct;
- D. to create or report a false or fictitious trade;
- E. to extort or attempt extortion;
- F. to buy or sell any Exchange futures or options contract with the intent to default on such purchase or sale;
- G. to prearrange the execution of transactions in Exchange products for the purpose of transferring equity between accounts;
- H. to engage in, or attempt to engage in, the manipulation of prices of Exchange futures or options contracts; to corner or squeeze, or attempt to corner or squeeze, the underlying cash market; to intentionally or recklessly use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; or to purchase or sell, or offer to purchase or sell Exchange futures or options contracts, or any underlying commodities or securities, for the purpose of upsetting the equilibrium of the market or creating a condition in which prices do not or will not reflect fair market values;
- I. to make a verbal or written material misstatement to the Board, a committee, or Exchange employees;
- J. to intentionally or recklessly deliver or cause to be delivered, or attempt to deliver or cause to be

- delivered, false, misleading or inaccurate information concerning crop or market information or conditions that affect or may affect the price of any Exchange futures or options contract or spot transaction in the underlying commodity;
- K. to trade or accept performance bonds after insolvency;
  - L.
    1. to fail to appear before the Board, Exchange staff or any investigative or hearing committee at a duly convened hearing, scheduled staff interview or in connection with any investigation;
    2. to fail to fully answer all questions or produce all books and records at such hearing or in connection with any investigation, or to make false statements;
    3. to fail to produce any books or records requested by duly authorized Exchange staff, in the format and medium specified in the request, within 10 days after such request is made or such shorter period of time as determined by the Market Regulation Department in exigent circumstances;
  - M. to use or disclose, for any purpose other than the performance of an individual's official duties as a member of any committee or the Board of Directors, any non-public information obtained by reason of participating in any Board of Directors or committee meeting or hearing;
  - N. to knowingly accept, directly or indirectly, a trade on the Exchange for the account of a non-member employed on the floor of the Exchange;
  - O. for a Member to permit the use of facilities or membership privileges in a manner that is detrimental to the interest or welfare of the Exchange or results in a violation of Exchange Rules or the Commodity Exchange Act;
  - P. for a Clearing Member to fail to maintain minimum financial requirements;
  - Q. to commit an act which is detrimental to the interest or welfare of the Exchange or to engage in any conduct which tends to impair the dignity or good name of the Exchange;
  - R. to fail to submit to arbitration any dispute which Exchange staff, an arbitration panel or the Board decides should be arbitrated pursuant to Chapter 6; or to fail to comply with a final arbitration award;
  - S. to fail, after hearing, to comply with an order of the Board, Exchange staff or any hearing committee;
  - T. to engage in dishonorable or uncommercial conduct;
  - U. except where a power of attorney or similar document has been executed pursuant to Rule 956, for any party to accept or transmit a customer order which has not been specifically authorized;
  - V. to be expelled from a U.S. or foreign designated commodities or securities exchange;
  - W. for any party to fail to diligently supervise its employees and agents in the conduct of their business relating to the Exchange;
  - X. to aid or abet the commission of any offense against the Exchange or any violation of an Exchange Rule;
  - Y. to use improperly the Globex platform or any electronic trading or clearing platform owned or controlled by CME Group or permit the unauthorized use of such platforms; and/or
  - Z. for a Member to fail to disclose to his qualifying Clearing Member that an involuntary bankruptcy petition has been filed against him or, in the case of a voluntary bankruptcy proceeding, that he has filed or has formed a definite intention to file for bankruptcy.

#### **433. STRICT LIABILITY FOR THE ACTS OF AGENTS**

Pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, and notwithstanding Rule 432.W., the act, omission, or failure of any official, agent, or other Person acting for any party within the scope of his employment or office shall be deemed the act, omission or failure of the party, as well as of the official, agent or other Person who committed the act.

#### **434. [RESERVED]**

#### **435. EFFECT OF SUSPENSION OR EXPULSION**

Unless otherwise determined by the committee with jurisdiction over such matters, a suspended or

expelled Member shall not be entitled to any of the privileges of membership during the period of such suspension or expulsion, including, but not limited to, the right to:

- A. access any trading floor or facility owned or controlled by CME Group;
- B. direct and indirect access to the Globex platform or any other electronic trading or clearing platform or facility owned or controlled by CME Group;
- C. obtain member rates; and
- D. any applicable cross-exchange trading privileges.

A member who has been expelled may not lease out an owned membership in any exchange owned or controlled by CME Group and must relinquish ownership of such membership(s) within 30 days of the date that the expulsion becomes the final decision of the Exchange.

**436. [RESERVED]**

**437. NOTICE OF DISCIPLINE**

Notice, in accordance with Section 8c(a)(2) of the Commodity Exchange Act, shall be made available to an internet accessible computer database at the National Futures Association and to an internet accessible computer database at CME Group and shall be provided to any Member or non-member who is suspended, expelled, disciplined or denied access to the Exchange within 30 days after the decision becomes final. Additionally, a written notice may be posted on the floor of the Exchange for five business days promptly after the disciplinary action becomes effective. The notice shall include the Member's or non-member's name, the Rule(s) violated, the reason for the Exchange's action and the action taken or penalty imposed.

**438. [RESERVED]**

**439. MEMBER'S INDEMNIFICATION LIABILITY**

A Member or former Member shall indemnify and hold harmless the Exchange, Chicago Mercantile Exchange Holdings Inc. and the New York Mercantile Exchange Inc., including each of their respective subsidiaries and affiliates (collectively, the indemnified parties) and their officers, directors, employees, and agents, for any and all losses, damages, costs and expenses (including attorneys' fees) incurred by the indemnified parties as a result (directly or indirectly) of such Member's violation or alleged violation of Exchange Rules or state or federal law.

Any charges arising out of this Rule shall be subject to liens as provided in Rule 110(a).

**440. CLAIMS BY MEMBERS**

A Member who commences a legal action against the Exchange, its directors, officers, employees, or agents, or another Member of the Exchange without first resorting to and exhausting the procedures established by Rule 110 and the mandatory arbitration provisions of Chapter 6 (including appeals to the Board), or any other Rules relating to settlement of disputes arising out of transactions or matters pertaining to the Exchange shall be deemed to have committed an act detrimental to the interest or welfare of the Exchange. This Rule shall not abrogate an individual's right to reparations pursuant to Section 14 of the Commodity Exchange Act.

A Member who commences a legal action against the Exchange, its directors, officers, employees, or agents, after he has exhausted all of the procedures established by the Exchange, may be found to have committed an act detrimental to the interest or welfare of the Exchange in the event that at hearing the Board or the BCC determines that the Member's action was not meritorious or warranted.

**441. COMMUNICATIONS WITH THE PUBLIC AND PROMOTIONAL MATERIAL**

Promotional material and similar information issued by Members shall comply with the requirements of National Futures Association Rule 2-29, as amended.

**442. NOTIFICATION OF SIGNIFICANT EVENTS**

Each Member shall provide immediate notice to the Market Regulation Department (and each Member that is a Member Firm or a Clearing Member shall also provide immediate notice to the Clearing House), in writing upon becoming aware of any of the following events relating to such Member:

1. any suspension, expulsion, revocation or restriction of such Member's trading privileges or any fine in excess of \$25,000, through an adverse determination, voluntary settlement or otherwise, by any court, commodity or securities exchange or related clearing organization, the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, the National Futures Association, the Financial Industry Regulatory Authority, Inc. or any self-regulatory or regulatory organization;
2. any indictment of the Member or any of its officers for, any conviction of the Member or any of its officers of, or any confession of guilt or plea of guilty or nolo contendere by the Member or any of its officers to 1) any felony or 2) any misdemeanor involving, arising from, or related to the purchase or sale of any commodity, security, futures contract, option or other financial instrument or involving or arising from fraud or moral turpitude; and/or
3. any filing of a bankruptcy petition or insolvency, receivership or equivalent proceeding of which the Member is a subject. In the case of a voluntary bankruptcy, insolvency, receivership or equivalent proceeding, the Member also shall notify the Market Regulation Department, (and the Clearing House in the case of a Member that is a Member Firm or Clearing Member) when such Member forms a definite intention to file such proceeding.

Nothing in this Rule shall limit or negate any other reporting obligations that any member may have to the Exchange or any other regulator or Person.

**443. [RESERVED]**

**444. PAYMENTS OF DISCIPLINARY FINES, DISGORGEMENT ORDERS AND RESTITUTION**

Disciplinary fines, disgorgement and restitution amounts ordered by an Exchange disciplinary committee must be submitted to the Market Regulation Department no later than the date specified in the notice of decision, except that fines issued by the Clearing House Risk Committee shall be paid to the Financial and Regulatory Surveillance Department. An individual or entity who fails to provide proof of payment within the time prescribed will forfeit the following privileges until the payment has been received: 1) access to all CME Group markets; 2) access to the Globex platform; and 3) access to any other electronic trading or clearing platform owned or controlled by CME Group. Any member firm that fails to make the required payment within the time prescribed will automatically forfeit preferred fee treatment for its proprietary trading until the payment has been received. Any party that fails to make the required payment shall immediately forfeit eligibility for any Exchange incentive or rebate program until the amount is paid in full. Any party that fails to pay a disciplinary fine, disgorgement order or restitution amount within the prescribed time period may also be subject to sanctions pursuant to Rule 432.S.

Parties may, subject to a determination by the sanctioning entity, be liable for unpaid fines or unpaid disgorgement orders and restitution amounts imposed upon their employees.

(End Chapter 4)