

## Chapter 7 Disciplinary Rules

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#### 7.1 Jurisdiction

- (A) All Members, Seat Lessees and Guaranteed Customers shall be subject to the jurisdiction of the Exchange for the purposes of this Chapter 7 of these Rules.
- (B) All employees of Members, Seat Lessees and Guaranteed Customers shall be subject to the jurisdiction of the Exchange to the same extent as their employers for the purposes of this Chapter 7 of these Rules.
- (C) In this Chapter 7, a reference to a Member shall be read to mean either a Member, a Seat Lessee or a Guaranteed Customer, as the case may be, and a reference to a Floor Member shall be read to mean either a Floor Member or a Seat Lessee, as the case may be.

## **7.2 Retention of jurisdiction over former Members**

- (A) The Exchange shall, subject to the provisions of this Rule 7.2, retain jurisdiction over former Members with respect to any proceeding or matter which occurred prior to the termination of Membership or Trading Privileges (**termination of Exchange privileges**) of such Member, howsoever such termination occurs.
- (B) Subject to paragraph (C) of this Rule 7.2, the CCO or his designee shall notify a former Member of an investigation or hearing pursuant to this Chapter 7 in connection with any matter involving such former Member which occurred prior to the termination of its Membership or access to the Trading Platform and/or the Exchange Floor. Such notice shall be in writing and shall be posted to the former Member as soon as possible and, in any event, no later than one (1) year after the effective date of such termination, by courier delivery to his last address as shown in the books and records of the Exchange.
- (C) Written notice in accordance with paragraph (B) of this Rule 7.2 shall not be necessary where such notice has been given prior to the termination of Membership or access to the Trading Platform and/or the Exchange Floor in relation to the former Member, whether in writing or orally during a recorded interview.
- (D) At any time after the notice has been served or given in accordance with paragraph (B) or (C) of this Rule 7.2, the CCO or his designee may, in connection with any matter specified in such notice, request in writing that the former Member furnish books, records and copies of documents, supply written or oral statements under oath, or appear and testify at any hearing. The former Member shall comply with such request as promptly as possible.
- (E) As soon as is practicable after the notice has been served or given in accordance with paragraph (B) or (C) of this Rule 7.2, the former Member may be charged with any breach of the Bylaws or Rules relating to any matter specified in such notice, including any failure to comply with a request pursuant to this Rule 7.2 or any subsequent breach of the Bylaws or Rules arising from the conduct of the former Member during the investigation. Any such former Member shall be subject to discipline as though its Membership or access to the Trading Platform and/or the Exchange Floor had not been terminated.

## **7.3 Retention of jurisdiction over former employees of Members**

- (A) Employees of Members having access to the Exchange Floor or to the Trading Platform or any part of the Exchange premises shall remain subject to Exchange jurisdiction for the purposes of this Chapter 7 if, subject to paragraph (B) of this Rule 7.3, within a period of one (1) year of such employee's termination of employment with any Member, the CCO or his designee advises such person in writing, by registered post to the employee's last known residence address as reflected in Exchange's records, or the records of the Member, that it is conducting an investigation of a possible breach or breaches of these Rules during the period of his employment.
- (B) Written notice in accordance with paragraph (A) of this Rule 7.3 shall not be necessary where such notice has been given prior to termination of the employee's employment, whether in writing or orally during a recorded interview.
- (C) Employees of Members notified of any investigation pursuant to paragraph (A) or (B) of this Rule 7.3 shall respond to all inquiries of the Compliance Department at the time and place and in the manner designated by the Compliance Department, and shall make available to the Compliance Department any books and records maintained by him in the course of his Exchange-related employment. Any person under such investigation shall be entitled to be accompanied by legal representatives in any interview conducted by the Compliance Department in the course of, and for the duration of, such investigation. Any interview conducted by the Compliance Department may be tape-recorded or transcribed stenographically at the election of the Compliance Department.

#### 7.4 Obligation of employees of Members to comply with Rules

All employees of Members must comply with all Rules, resolutions of the Board and policies of the Exchange as if specifically referred to therein. Any Rule which provides for the discipline, suspension, or imposition of a fine or other penalty for breach thereof shall apply to all employees of Members for the purposes of disciplinary and summary action as provided in this Chapter 7. Rule breaches and suspected Rule breaches shall be investigated and resolved as described in this Chapter 7, including summary action taken pursuant to Rules 7.31 and 7.32.

#### 7.5 Classification of offences

- (A) Offences shall be classified as major offences (**Major Offences**) and minor offences (**Minor Offences**).
- (B) Major Offences shall be punishable by one or more of the following:
- (1) expulsion or suspension from all or some rights and privileges of Membership, Trading Privileges, authorisation as an Authorised Terminal User and employment on the Exchange Floor;
  - (2) a censure;
  - (3) a fine of not more than one million dollars (\$1,000,000);
  - (4) a cease and desist order; or
  - (5) an order directing restitution to any injured person.
- (C) Minor Offences shall be punishable by one or more of the following:
- (1) a fine of not more than ten thousand dollars (\$10,000);
  - (2) a censure;
  - (3) a cease or desist order;
  - (4) an order directing restitution to any injured party; or
  - (5) suspension of not more than one (1) year from all or some rights and privileges of Membership, access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User and/or employment on the Exchange Floor.
- (D) Unless a good cause is shown, any offence involving fraudulent or deceitful trading practices detrimental to a Customer's order shall be a Major Offence and shall be punishable at a minimum with a suspension or revocation of the Member's right to execute Customer orders.
- (E) Where a Member or any employee of a Member commits the same Minor Offence or breaches the same Rule twice within a period of twenty-four (24) months of a final disciplinary action by the Exchange, he will be subject to penalty provisions equivalent to a Major Offence.
- (F) **Major Offences.** A Member or employee of a Member shall not do any of the following, which shall be deemed Major Offences:
- (1) knowingly give an execution to a Customer which purports to be a Market Contract executed on the Exchange but which is not backed by a contract traded on the Exchange (i.e. "bucketing"), or aid, abet or collude with any other person to carry out, or attempt to carry out, such an action;
  - (2) act fraudulently or in bad faith;

- (3) conduct itself dishonestly;
- (4) make or report, or attempt to make or report, a false or fictitious trade;
- (5) attempt or engage in extortion;
- (6) default on, be delinquent in or otherwise fail to comply with the delivery requirements on any contract;
- (7) attempt or engage in wash trading or accommodation trading;
- (8) manipulate prices or attempt to manipulate prices or corner or attempt to corner the market, or engage in any practice which results in such manipulation or cornering;
- (9) engage in any behaviour amounting to market misconduct as provided for in Part 8 (Prevention of Market Misconduct) of the Markets Law;
- (10) make a material misstatement to the Board or to a committee of the Exchange, or in any information supplied to the Exchange or its officials;
- (11) knowingly disseminate or attempt to disseminate false, misleading or inaccurate reports concerning market information or conditions that affect or tend to affect the price of any commodity upon the Exchange;
- (12) trade or accept margins after insolvency;
- (13) refuse to appear before the Board, the CCO or his designee or any committee or at a duly convened investigative hearing, or, in connection with any investigation, refuse fully to answer all questions and produce all books and records at such hearing or investigation, or testify falsely;
- (14) make use of or reveal any Confidential Information obtained by reason of participating on the Board or on any committee or in any investigative proceeding or hearing;
- (15) knowingly accept, execute or clear a trade on the Exchange, or attempt to do so, for:
  - (a) the account of an Exchange employee;
  - (b) the account of any person who is not a Member; or
  - (c) an account in which such employee or non-Member has a direct or indirect interest;
- (16) use or permit the use of the Exchange or the Trading Platform in a manner that impairs the dignity or degrades the good name of the Exchange, or creates a market or other situation detrimental to the Exchange, or results in breach of the Price Fluctuation Limits, or effects or attempts to effect manipulations or corners;
- (17) use improperly or permit the unauthorised use of the Trading Platform;
- (18) fail to maintain minimum financial requirements;
- (19) attempt or commit an act which is substantially detrimental to the interests or welfare of the Exchange;
- (20) refuse to comply with an order of the Board, the CEO or his designee, the CCO or his designee or any committee of the Exchange;
- (21) intentionally breach any Rule that results in harm to a Customer;

- (22) fail to provide a required notice to the Exchange;
  - (23) breach Rule 3.8 (Confidential Information), Rule 4.29 (Payment of gratuity), Rule 2.2(B) (Training) or Rule 6.9 (Telephone Calls); or
  - (24) fail to supervise any employee or agent adequately so as to prevent that person breaching any Rule that:
    - (a) results in substantial detriment of the welfare and interests of the Exchange;
    - (b) results in harm to a Customer or another Member; or
    - (c) otherwise constitutes a Major Offence.
- (G) **Minor Offences.** A Member or employee of a Member shall not do any of the following, which shall be deemed Minor Offences:
- (1) attempt or engage in conduct detrimental to the Exchange;
  - (2) attempt or engage in conduct inconsistent with just and equitable principles of trade;
  - (3) attempt or engage in conduct tending to impair the dignity or the good name of the Exchange;
  - (4) breach any Rule, the breach of which is not a Major Offence;
  - (5) circulate or aid in the circulation in any manner of rumours which tend to reflect on the integrity of any Exchange Contract;
  - (6) fail consistently to conform to audit trail and/or trade submission standards;
  - (7) breach Rule 6.6(B) (Trading Badge); or
  - (8) fail to supervise any employee or agent adequately in order to prevent breaches of Rules by such person,

provided that, where the breach of a Rule by such a person is a first offence of that kind and the Member discloses the breach to the Exchange and takes immediate and appropriate remedial action on its own initiative upon discovering the breach, that shall constitute mitigating circumstances to a charge of breaching this paragraph (G) of this Rule 7.5.

- (H) A breach of a cease and desist order may be determined to be either a Major or a Minor offence.

## **7.6 Compliance Department**

- (A) The Compliance Department shall consist of employees of the Exchange. Such employees may not be Members or persons otherwise subject to the jurisdiction of Chapter 7 of these Rules.
- (B) The Compliance Department shall be headed by the CCO. The Exchange may also employ persons (who shall not be Members or persons otherwise subject to the jurisdiction of Chapter 7 of these Rules) to assist the Compliance Department in carrying out its functions under this Chapter 7.
- (C) The Compliance Department may also receive support from representatives of NYMEX, Inc. to assist the Compliance Department in carrying out its functions.
- (D) The Compliance Department shall conduct investigations of Rule breaches and suspected Rule breaches.

## **7.7 Complaints about users of the Exchange**

- (A) Any complaint about the conduct of a Member or employee of a Member, or suspicion that any of the foregoing has committed or is about to commit a Rule breach, shall be made in writing and be addressed to the CCO.
- (B) The Compliance Department will acknowledge such complaint promptly after receiving it. Enclosed with the acknowledgement will be a copy of this Chapter 7.
- (C) Any complaint received by the CCO under paragraph (A) of this Rule 7.7 will be considered promptly by a member of the Compliance Department.
- (D) If the Compliance Department considers that the conduct complained of may constitute a Rule breach, it will instigate a full investigation according to the procedures set out in Rule 7.9.
- (E) The Compliance Department shall retain copies of all documents and materials relating to any complaint received by the CCO under paragraph (A) of this Rule 7.7 for a minimum of six (6) years.

## **7.8 Inspections and enquiries**

- (A) The CCO may authorise the Compliance Department to carry out routine inspections and enquiries about the conduct of any Member or employee of a Member. In carrying out such inspections and enquiries, the Compliance Department shall have the powers described in paragraphs (B) to (D) of Rule 7.9. Members or employees of Members shall co-operate fully with the Compliance Department's inspection and enquiries.
- (B) If the Compliance Department concludes from such inspections and enquiries that there may have been a Rule breach, it shall instigate an investigation according to the procedures set out in Rule 7.9.

## **7.9 Investigation**

- (A) During the investigation of a Rule breach or suspected Rule Breach by the Compliance Department, the CCO may, in his discretion, taking into account the circumstances of the matter, advise all relevant parties of the investigation. In that event, the Member or employee of a Member shall be permitted to present to the Compliance Department any facts in their defence.
- (B) The Compliance Department may, in the course of its investigation, interview any Member or employee of a Member as it sees fit and at such time, manner and place it determines in its absolute discretion. For the purposes of any interview conducted pursuant to this paragraph (B) of this Rule 7.9, a Member or employee of a Member must be informed in writing prior to the interview that he may be legally represented at the interview. Procedures governing the conduct of an interview under this paragraph (B) of this Rule 7.9, including the limitation on adjournments granted to accommodate an interviewee's legal representative's schedule to reasonable periods of time, shall be determined by the Compliance Department. Any interview conducted by the Compliance Department may be tape-recorded or transcribed stenographically at the election of the Compliance Department.
- (C) Any Member or employee of a Member who fails to attend any interview pursuant to paragraph (B) of this Rule 7.9 may be fined two thousand dollars (\$2,000) per day of non-attendance and may be excluded from the Exchange Floor or the Trading Platform until he takes reasonable steps to make himself available on an alternative date.
- (D) In investigating the conduct and transactions of Members and employees of Members the Compliance Department may visit their premises and examine their books and records. Members and employees of Members shall make their books and records available to the Compliance Department and shall respond to all inquiries of, and requests for information

from, the Compliance Department as it deems necessary to pursue its investigation at the time, place and in the manner designated by the Compliance Department.

- (E) The Compliance Department may issue warning letters to persons under investigation informing them that there may have been a Rule breach and that such continued activity may result in more severe disciplinary sanctions. Such warning letter is not a penalty nor is it an indication that a finding of a Rule breach has been made.
- (F) The CCO shall submit reports to the Board. Such reports shall describe for the period covered by each report:
  - (1) the activities of the Compliance Department;
  - (2) all investigations commenced and terminated; and
  - (3) the disposition of all cases presented to the Disciplinary Committee and the Appeal Committee.

Such reports are to be submitted at least twice a year.

#### **7.10 Service and filing of documents**

- (A) For the purposes of all proceedings under this Chapter 7, unless otherwise stated, any document shall be deemed to be served or filed (as appropriate):
  - (1) on the second Business Day after it is posted, if it is sent by registered post;
  - (2) on the day it is delivered, if it is delivered personally or by a generally recognised overnight delivery service before 17.00 (in the place of delivery) on a Business Day; or
  - (3) on the Business Day following the day on which it is delivered, if it is delivered personally or by a generally recognised overnight delivery service after 17.00 (in the place of delivery) on a Business Day.

#### **7.11 Investigative Report**

- (A) When an investigation is completed, the Compliance Department shall prepare an investigative report (**Investigative Report**).
- (B) The Investigative Report shall be in writing and shall set out:
  - (1) the reason the investigation was initiated;
  - (2) the relevant facts;
  - (3) the conclusions of the Compliance Department; and
  - (4) if the Compliance Department concludes that there is a reasonable basis to believe that a Rule breach occurred, the recommendation of the Compliance Department to the Disciplinary Committee.
- (C) The Investigative Report, when completed, shall be submitted for presentation to the Disciplinary Committee.

#### **7.12 Disciplinary Committee**

- (A) The Disciplinary Committee shall have the power to direct the Compliance Department to investigate any suspected Rule breach within its jurisdiction in which case the Compliance Department shall carry out a full investigation according to the procedure set out in Rule 7.9 and prepare an Investigative Report in accordance with Rule 7.11.

- (B) The Disciplinary Committee shall meet monthly, or as necessary, to review Investigative Reports.
- (C) As provided for in Rule 3.10(B), a member of the Disciplinary Committee shall excuse himself from such review where he, or any person with whom he is affiliated, has a financial, personal or other interest in the matter or parties under consideration.
- (D) The Disciplinary Committee shall permit the Member or employee of a Member under investigation to present evidence on its or his behalf. Such presentation shall be conducted pursuant to the following procedures:
  - (1) the Investigative Report shall be served by the Compliance Department on the Member or employee of a Member that is the subject of the report at the last address filed with the Exchange;
  - (2) the Member or employee of a Member may submit to the Disciplinary Committee a written statement together with any supporting documentation which is relevant to the investigation;
  - (3) such statement shall be filed with the Membership Department not later than ten (10) Business Days following service of the Investigative Report from the Compliance Department.
- (E) The Compliance Department shall be present during the Disciplinary Committee's review of an Investigative Report, and shall respond to all inquiries of the Disciplinary Committee. Members or employees of Members who have submitted a written response to the Disciplinary Committee in the manner set out in paragraph (D) of this Rule 7.12 may, after the presentation of the Compliance Department's report and before deliberations of the Disciplinary Committee, personally appear before the Disciplinary Committee, either with or without legal representation, with the Compliance Department present to make an oral presentation relevant to the Disciplinary Committee's review of the Investigative Report, and may answer any questions posed by the Disciplinary Committee, provided, however, that the presentation be limited to matters raised in the written statement submitted pursuant to paragraph (D) of this Rule 7.12.
- (F) If the Disciplinary Committee concludes that a reasonable basis exists for finding that a Rule breach has occurred, it shall direct the Compliance Department to advise the Member or employee of a Member of that fact and take any one of the following actions:
  - (1) issue a warning letter to the effect that the Disciplinary Committee has concluded that a Rule breach has occurred but that in all the circumstances no disciplinary proceedings will be initiated against the Member or employee of a Member in relation to that Rule breach;
  - (2) issue a Notice in accordance with Rule 7.13.

**7.13 Notice instituting disciplinary proceedings (a Notice)**

- (A) If the Disciplinary Committee directs the Compliance Department to issue a Notice, the Notice shall be served on the Member or employee of a Member named in the Notice either:
  - (1) personally; or
  - (2) by courier delivery to the last address filed with the Exchange.
- (B) The Notice shall:
  - (1) set out the acts, practices or conduct in which the Member or employee of a Member is alleged to have engaged; and

- (2) state the Rule or Rules alleged to have been, or about to be, breached.
- (C) **Respondent** means a Member or employee of a Member against whom a Notice has been filed.
- (D) The Compliance Department shall also notify the Respondent that the Respondent:
  - (1) is entitled to a hearing on the charges in the Notice;
  - (2) if the Respondent wishes such a hearing, must so request in writing, and that failure to request a hearing within twenty (20) Business Days after service of the Notice will operate as a waiver of the right to a hearing, unless good cause for the delay in making the request is shown by the Respondent;
  - (3) must file an Answer to the Notice with the Membership Department within twenty (20) Business Days of service of the Notice, in accordance with Rule 7.14; and
  - (4) will be deemed to admit the allegations in the Notice if the Respondent does not so file an Answer.

#### **7.14 Answer**

- (A) The Respondent must serve on the Compliance Department and file with the Membership Department a written notice (an **Answer**) and a request for a hearing within twenty (20) Business Days of service of the Notice.
- (B) If no Answer is filed within such period, unless good cause is shown, all the charges in the Notice will be deemed to have been admitted.
- (C) Any charges in the Notice not denied in the Answer shall be deemed admitted.

#### **7.15 Reply**

- (A) The Compliance Department may serve upon the Respondent and file with the Membership Department a written reply (a **Reply**) to any Answer within ten (10) Business Days of the filing of the Answer by the Respondent.
- (B) Any Reply must be limited to the matters set out in the Answer.

#### **7.16 Hearing Panel**

- (A) The Notice, any Answer and any Reply shall be filed with the chairman of the Membership Committee not later than Twenty (20) Business Days after service of the Reply, if any.
- (B) The chairman of the Membership Committee shall assign the case to a Hearing Panel to hear and decide the matter.
- (C) The chairman of the Membership Committee shall give written notification to the Respondent and the Compliance Department of the names of the persons on the Hearing Panel to which the case has been assigned pursuant to paragraph (B) of this Rule 7.16 at least fifteen (15) Business Days prior to the initial hearing date.
- (D) The Hearing Panel shall be appointed by the chairman of the Membership Committee and shall consist of a chairman and no fewer than two (2) lay members. The Chairman of the Hearing Panel must have been a lawyer by profession for at least ten (10) years who has relevant experience and who is not a Member or a director, officer or employee of any Member or of any Affiliate of any Member. A lay member of the Hearing Panel may be a Member or director, officer or employee of a Member or of an Affiliate of a Member.
- (E) No member of the Disciplinary Committee may serve on a Hearing Panel.

- (F) No person may serve on a Hearing Panel in a case in which he has any financial, personal or other interest in the matter under consideration, or if such person has engaged previously in any disciplinary function under these Rules in connection with the matter before the Hearing Panel, including service as a member of the Disciplinary Committee. Such person shall promptly make such interest known to the chairman of the Membership Committee.
- (G) The Compliance Department and/or the Respondent may file with the Membership Department a written challenge against any member of the Hearing Panel for cause. The merits of such challenge shall be decided by the chairman of the Membership Committee in his sole discretion, unless the challenge relates to the chairman of the Membership Committee in which case the merits of the challenge will be decided by the CEO or his designee. Unless a party's written challenge is received by the Membership Department within seven (7) Business Days of service of notice in accordance with paragraph (C) of this Rule 7.16, any right of challenge shall be waived.
- (H) The initial hearing shall be conducted on such date and at such time and place as the chairman of the Hearing Panel decides on not less than ten (10) Business Days' written notice to the Compliance Department and to the Respondent.

#### **7.17 Pre-hearing procedures**

- (A) At least seven (7) Business Days before the scheduled start of the hearing, the Compliance Department and the Respondent respectively shall furnish each other with a list of witnesses they intend to call in the presentation of their cases at the hearing, and a list of all documents they intend to rely on at the hearing.
- (B) The Compliance Department shall retain all rights and powers of investigation under paragraph (D) of Rule 7.9 after completion of the Investigative Report and until the hearing is completed.

#### **7.18 Hearing procedures**

- (A) The Hearing Panel may determine the procedures to be applied in any hearing before it, provided, however, that the following procedures shall apply in every case.
  - (1) The prosecution shall be conducted by the Compliance Department.
  - (2) The Respondent may be represented by a lawyer or any other representative and may, either personally or through this representative, present witnesses or other evidence and cross-examine witnesses.
  - (3) The formal rules of evidence shall not apply and the Hearing Panel shall have the discretion to accept or to reject any and all evidence.
  - (4) A record of the proceedings shall be made.
  - (5) The Notice, any Answer, any Reply, the record of the proceedings, and (if any) the documentary evidence or other material presented to the Hearing Panel by either party shall constitute the record of the hearing.
  - (6) The burden of proof shall be on the Compliance Department.
  - (7) A finding of a Rule breach shall be made on the weight of the evidence contained in the record of the proceeding.
- (B) In advance of the hearing, the Respondent shall be entitled to examine all books, documents and other evidence in the possession or under the control of the Exchange that:
  - (1) are to be relied upon by the Compliance Department in prosecuting the matter; or

- (2) are relevant to the charges.
- (C) The Compliance Department shall make such material available to the Respondent and the Respondent's representative for inspection within twenty (20) Business Days after the filing of an Answer by the Respondent pursuant to Rule 7.14.
- (D) Any person within the jurisdiction of the Exchange who is called as a witness at any hearing shall appear at such hearing and give testimony or produce evidence.
- (E) The Hearing Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.
- (F) The Compliance Department may make submissions to the Hearing Panel as to the appropriate sanction and any such submissions shall be made available to the Respondent, who shall have the right to make submissions in reply regarding the sanction.

#### **7.19 Settlements**

- (A) When the Compliance Department concludes that a Rule breach has occurred, the Compliance Department may at any time prior to the submission of an Investigation Report to the Disciplinary Committee negotiate with the Respondent and enter into a written offer of settlement with the Respondent (an **Offer of Settlement**).
- (B) The Respondent may agree, without admitting or denying a Rule breach, to an Offer of Settlement which may provide for any one of the following:
  - (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine of not more than five thousand dollars (\$5,000) for each Rule breach alleged; or
  - (5) any combination of such penalties.
- (C) Any such settlement is subject to the approval of the Disciplinary Committee.
- (D) Concurrent with the review and consideration of an Investigation Report, the Disciplinary Committee may also approve an Offer of Settlement which has been submitted by the Respondent and recommended by the Compliance Department (a **Joint Offer of Settlement**) or has been unilaterally submitted by the Respondent (a **Unilateral Offer of Settlement**).
- (E) Prior to the Respondent's submission of the Unilateral Offer of Settlement to the Disciplinary Committee, the Respondent shall be required to file a written copy of the Unilateral Offer of Settlement with the Compliance Department. Thereafter, the Compliance Department may submit a written response to the Disciplinary Committee.
- (F) The Disciplinary Committee has the sole discretion to determine whether it will hear oral arguments, and it may approve or reject either a Joint or a Unilateral Offer of Settlement.
- (G) Subsequent to the Disciplinary Committee's consideration of an Investigative Report and its directive that a Notice be issued, but prior to filing of the Notice on the chairman of the Membership Committee, the Respondent may submit a Joint Offer of Settlement to the Disciplinary Committee. Alternatively, the Respondent may submit a Unilateral Offer of Settlement to the Disciplinary Committee, in which case the provisions of paragraph (E) of this Rule 7.19 will apply.
- (H) Any Offer of Settlement agreed to under paragraphs (D) to (G) of this Rule 7.19 may provide for any of the following:

- (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine of not more than twenty five thousand dollars (\$25,000) for each Rule breach alleged to have been committed; or
  - (5) an expulsion or a suspension from all or some rights and privileges of Membership, access to the Exchange Floor and/or the Trading Platform, authorisation as an Authorised Terminal User or employment on the Exchange Floor, for a period not to exceed three (3) months for each Rule breach alleged; or
  - (6) any combination of such penalties.
- (I) Any Offer of Settlement approved by the Disciplinary Committee shall be accompanied by a Notice and is subject to the approval of the Board.
- (J) If the Respondent wishes to settle a matter at any time after the filing of the Notice with the chairman of the Membership Committee, the Respondent may submit a Unilateral Offer of Settlement to the Hearing Panel to which the case has been assigned. Prior to the Respondent's submission of an Offer of Settlement to the Hearing Panel under this paragraph (J), the Respondent shall be required to file a written copy of the Unilateral Offer of Settlement with the Compliance Department.
- (K) The Compliance Department may recommend to the Hearing Panel an approval or a rejection of any Offer of Settlement made in accordance with paragraph (J) of this Rule 7.19.
- (L) An Offer of Settlement made in accordance with paragraph (J) of this Rule 7.19 may provide for any of the following:
- (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine not to exceed one million dollars (\$1,000,000) for each Rule breach alleged to have been committed;
  - (5) an expulsion or a suspension from all or some rights and privileges of Membership, access to the Exchange Floor and/or the Trading Platform, authorisation as an Authorised Terminal User or employment on the Exchange Floor; or
  - (6) any combination of such penalties.
- (M) Any Offer of Settlement made in accordance with paragraph (J) of this Rule 7.19 must be approved by the Hearing Panel and further approved by the Board.
- (N) In approving an Offer of Settlement, the Board shall determine the date on which the settlement is to take effect and, if the settled terms include provision for payment of a fine, the date on which such fine is payable by the Respondent.
- (O) Following the Board's approval of an Offer of Settlement, the Compliance Department shall forthwith issue and send to the Respondent a Notice of Settlement which sets out the settled terms and the dates which the Board has directed those terms to become effective and any fine is to be payable.

## 7.20 Decision

- (A) The Hearing Panel shall give a written decision (a **Decision**) within forty-five (45) Business Days after the later of the close of the hearing and the last day on which any post-hearing submissions were required to be filed by the Compliance Department or the Respondent, unless by virtue of the complexity of the case or other special circumstances, additional time is required for the preparation of the Decision.
- (B) The Decision shall including:
- (1) a summary of the Notice (including the charges) and the Answer;
  - (2) a summary of the evidence produced at the hearing (if any);
  - (3) a statement of the findings and conclusions of the Hearing Panel with respect to each charge; and
  - (4) where the Hearing Panel finds that the Respondent has committed any Rule breach, an order stating the penalties imposed and the effective date of such penalties.
- (C) Notwithstanding the provisions of paragraph (A) of this Rule 7.20, the Hearing Panel may issue a written summary decision setting forth its determination of liability and penalties, if any, prior to the issue of the Decision.
- (D) Where the Respondent has admitted any Rule breach charged in the Notice, the Hearing Panel shall impose a penalty for each breach in accordance with paragraph (G) of this Rule 7.20. The Hearing Panel shall notify the Respondent of the penalty within forty-five (45) Business Days after the filing of the admission of a Rule breach.
- (E) Where the Respondent has:
- (1) failed to deny the Rule breach(es) charged; or
  - (2) submitted an Answer denying the Rule breach(es) charged but not requested a hearing; or
  - (3) waived a hearing,
- the Hearing Panel shall make its decision in accordance with paragraphs (A) and (B) of this Rule 7.20 based on such documents filed by the Compliance Department and the Respondent as required by the Hearing Panel.
- (F) Where the Respondent fails to appear at a requested hearing at the time and place scheduled, the Hearing Panel shall make its decision in accordance with paragraphs (A) and (B) of this Rule 7.20 based on such documents filed by the Compliance Department and the Respondent as required by the Hearing Panel.
- (G) If the Hearing Panel determines to order the imposition of a penalty, the penalties which may be imposed are any one of the following:
- (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine of not more than one million dollars (\$1,000,000) for each Rule breach found to have been committed;

- (5) an expulsion or a suspension from all or some rights and privileges of Membership, access to the Exchange Floor and/or the Trading Platform, authorisation as an Authorised Terminal User or employment on the Exchange Floor; and
- (6) any combination of such penalties.
- (H) Notice of the Respondent's right to appeal, pursuant to Rule 7.22, shall be incorporated into a Decision issued in accordance with paragraph (A) of this Rule 7.20.
- (I) The Decision shall be served by the Membership Department on the Respondent either:
  - (1) personally; or
  - (2) by overnight courier delivery to the last address filed with the Exchange.
- (J) Unless appealed, a Decision is the final decision of the Exchange and shall be effective fifteen (15) Business Days after a copy of the Decision has been served upon the Respondent.
- (K) Any fine imposed by a Hearing Panel shall be due and payable on the effective date of the Decision or on such later date as the Hearing Panel may specify in the Decision.
- (L) The Compliance Department may (and shall, if the Hearing Panel so directs) give such publicity as it considers appropriate (or is directed to give) to any finding of, or any sanction imposed or order made by, the Hearing Panel.

#### **7.21 The level of fine**

- (A) In assessing the amount of any fine, the Hearing Panel shall take account of the following factors:
  - (1) the seriousness and potential impact of the Rule Breach or, if more than one, the Rule breaches when taken in aggregate;
  - (2) whether the Rule breach was deliberate or reckless;
  - (3) the extent to which the Respondent has accrued profits or avoided losses as a result of the Rule breach(es);
  - (4) where the Respondent is an individual, the financial resources available to him or her and the potential effect on his or her livelihood;
  - (5) where the Respondent is a corporate body, unincorporated association or partnership, the size of the Respondent and the financial resources available to it;
  - (6) the disciplinary and compliance history of the Respondent;
  - (7) whether the fine is to be combined with another penalty;
  - (8) the extent to which the Respondent co-operated in the Exchange's investigation and subsequent disciplinary action;
  - (9) any other relevant circumstance of which the Hearing Panel is, or has been made, aware in relation to the Respondent.
- (B) In approving any Joint or Unilateral Offer of Settlement containing provision for payment of a fine, the Disciplinary Committee, the Hearing Panel and the Board (as the case may be) shall take account of the factors set out in (1) to (9) of paragraph (A) of this Rule 7.21, having regard to the nature of the Rule breach or breaches as alleged in the Notice.

## 7.22 Appeals

- (A) Within ten (10) Business Days of the Decision being served upon the Respondent, the Respondent may appeal the Decision by serving on the Compliance Department and filing with the Membership Department a written notice of appeal (a **Notice of Appeal**) and a request for the transcript of the proceedings before the Hearing Panel. Such transcript shall be provided to the Respondent as soon as is reasonably practical.
- (B) Within ten (10) Business Days of service of the transcript of the proceedings, a Respondent who has filed a Notice of Appeal within the time stipulated in paragraph (A) of this Rule 7.22 shall serve on the Compliance Department and file with the Membership Department a written memorandum of appeal (a **Memorandum of Appeal**) specifying the grounds of the appeal. The grounds of appeal may be any one or more of the following:
- (1) the Hearing Panel misdirected itself;
  - (2) the Decision was:
    - (a) one which no reasonable Hearing Panel could have reached;
    - (b) unsupported by the evidence or against the weight of the evidence; or
    - (c) based on an error of law or a misinterpretation of these Rules;
  - (3) the sanction imposed by the Hearing Panel was excessive or otherwise inappropriate; or
  - (4) new evidence is available and, had it been adduced before the Hearing Panel, the Hearing Panel could reasonably have come to a different decision.
- (C) The ground of appeal referred to in paragraph (B)(4) of this Rule 7.22 will not be a valid ground for appeal if the evidence could have been made available to the Hearing Panel by the exercise of reasonable diligence.
- (D) A failure to file either a Notice of Appeal or Memorandum of Appeal within the times stipulated shall operate as a waiver of all rights of appeal.

## 7.23 Compliance Department's Answer

The Compliance Department shall serve upon the Respondent and file with the Membership Department, within ten (10) Business Days of the Respondent filing the Memorandum of Appeal, a written answer (an **Answer on Appeal**).

## 7.24 Respondent's Reply

The Respondent may serve on the Compliance Department and file with the Membership Department, within five (5) Business Days of the service of the Compliance Department's Answer on Appeal, a written reply (a **Reply on Appeal**). Such Reply on Appeal must be limited to the matters contained in the Answer.

## 7.25 Appeal Committee

- (A) Any appeal shall be heard and decided by the Appeal Committee.
- (B) The chairman of the Appeal Committee shall notify the Respondent and the Compliance Department in writing of the names of the members of the Appeal Committee at least fifteen (15) Business Days prior to the initial hearing date.
- (C) No person who has participated in any stage of the disciplinary process, or who has any financial, personal or other interest in the matter or parties under consideration, may serve on

the Appeal Committee. Any person so interested shall promptly notify the chairman of the Appeal Committee of his interest.

- (D) The Compliance Department and/or the Respondent may file with the Membership Department a written challenge against any member of the Appeal Committee for cause. The merits of such challenge shall be decided by the chairman of the Appeal Committee in his sole discretion, unless such challenge is made against the chairman of the Appeal Committee, in which case the merits of the challenge shall be decided by the alternate member of the Committee. Unless a party's written challenge is received by the Membership Department within seven (7) Business Days of service of the notice by the chairman of the Appeal Committee under paragraph (B) of this Rule 7.25, any right of challenge shall be waived.

#### **7.26 Procedures of the Appeal Committee**

- (A) The Appeal Committee may, if it considers it appropriate, but only with the agreement of the Compliance Department and the Respondent, decide the appeal on the basis of the record of the proceeding, the Memorandum of Appeal, Answer on Appeal and Reply on Appeal, and any other documentary evidence which the Compliance Department and the Respondent each wish to place before it. In all other cases, the Compliance Department and the Respondent shall be given the opportunity (and may be required by the Appeal Committee upon reasonable notice) to attend and give evidence before the Appeal Committee and be questioned by the other party and the Appeal Committee. The Compliance Department or the Respondent may call witnesses to give evidence and be questioned by the other party and the Appeal Committee.
- (B) The Appeal Committee may call for any person to attend its hearings. This provision aside, all hearings shall be in private unless the Respondent requests otherwise and the Exchange and the Appeal Committee consent to its or his request.
- (C) The Appeal Committee shall adopt such procedures as it thinks fit and just, provided however that the following procedures shall apply in all cases:
  - (1) the Appeal Committee may request from the Compliance Department or the Respondent such further statements, information, documents or other evidence as it may think fit;
  - (2) the Compliance Department and the Respondent may adduce such further evidence as they consider necessary within reasonable time limits agreed by the Appeal Committee;
  - (3) the Appeal Committee, or its chairman sitting alone, may deal with such matters as it considers appropriate at a pre-hearing review of the appeal;
  - (4) the Appeal Committee, or its chairman sitting alone, may issue directions and take such other steps as it considers appropriate for the clarification of the facts and issues and for the just and expeditious determination of the appeal;
  - (5) the Appeal Committee may accept as conclusive any finding of fact made by a court or any regulatory body;
  - (6) a Respondent's disciplinary history shall not be disclosed to the Appeal Committee until the Appeal Committee has decided that the Respondent has committed a Rule breach; and
  - (7) if the Appeal Committee determines that the Respondent has breached a Rule, it shall request the Respondent's disciplinary record from the Compliance Department and may take that record into account in deciding the appropriate sanction.

- (D) The Compliance Department may make submissions to the Appeal Committee as to the appropriate sanction and any such submissions shall be made available to the Respondent, who shall have the right to make submissions in reply regarding the sanction.

#### **7.27 Decision of the Appeal Committee**

- (A) No findings of a Hearing Panel referred to in paragraph (A) of Rule 7.20 may be set aside if supported by the evidence in the record of the proceeding.
- (B) The Appeal Committee may affirm, reverse or modify a Decision in whole or in part. In the event of a reversal, the matter may be remitted to the same or a differently constituted Hearing Panel for further proceedings or may be dismissed. Modification of a Decision may include, among other things, an increase in any penalties imposed by the Hearing Panel taking account of the factors set out in sub-paragraphs (1) to (9) of paragraph (A) of Rule 7.21.
- (C) The Appeal Committee shall issue a written decision as soon as reasonably practical after the hearing of the appeal.
- (D) The Appeal Committee's decision shall include:
  - (1) a statement of its findings and conclusions with respect to each charge or penalty reviewed;
  - (2) its reasons for those findings and conclusions;
  - (3) the specific Rule breach(es) which the Respondent was found to have committed;
  - (4) an order confirming or modifying any penalties imposed, if any; and
  - (5) the effective date of such decision and penalty.
- (E) Any decision of the Appeal Committee is the final decision of the Exchange and shall be effective fifteen (15) Business Days after it is served upon the Respondent.
- (F) Any fine imposed or modified by the Appeal Committee shall be due and payable on the effective date of the Appeal Committee's decision as stated therein or on such later date as the Appeal Committee may specify in its decision.
- (G) The Compliance Department may (and shall, if the Appeal Committee so directs) give such publicity as it considers appropriate (or is directed to give) in relation to any finding of, or any sanction imposed or order made by, the Appeal Committee.

#### **7.28 Ex parte communications**

- (A) While proceedings before either the Hearing Panel or the Appeal Committee are pending, there shall be no *ex parte* communications relating to those proceedings between representatives of the Compliance Department, the Respondent, the Respondent's legal representative, or anyone acting on the Respondent's behalf, and any member of the Hearing Panel or Appeal Committee (as appropriate) or any legal adviser to the Hearing Panel or Appeal Committee, provided that such parties may have *ex parte* communications with the legal adviser (if any) to the Hearing Panel or Appeal Committee on timetabling and procedural matters.
- (B) Any person who receives, makes, or learns of any *ex parte* communication which is prohibited by paragraph (A) of this Rule 7.28 shall promptly give written notice of such communication and any response thereto to all parties to the proceedings to which the communication relates and place on the record of the proceeding any such written communications or responses and a memorandum stating the substance of any such oral communications or responses.

## 7.29 Confidentiality of Exchange investigations and proceedings

Save to the extent disclosed in a Decision, all investigatory materials and all other documents and evidence presented in any disciplinary proceeding shall be confidential and shall not be disclosed to any person other than the Complaints Commissioner, as provided in the Exchange's complaints procedure(s).

## 7.30 Expulsion or Permanent Withdrawal of Trading Privileges by the Board

- (A) The Board, under the procedures set out in paragraph (B) of this Rule 7.30, may expel any Member or employee of a Member who, within a five (5) year period, has either:
- (1) on two or more occasions, as a result of a Notice under Rule 7.13 or a settlement under Rule 7.19, withdrawn or been suspended from all or some rights and privileges of Membership, access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor;
  - (2) been fined or agreed to pay in settlement more than fifty thousand dollars (\$50,000) in aggregate.
- (B) The Compliance Department shall inform the Board of any individual or entity who falls within this Rule 7.30 within thirty (30) Business Days of receipt of a final disciplinary decision which makes applicable its provisions.
- (C) The following procedures shall be followed for any proceedings that the Board may institute under paragraph (A) of this Rule 7.30.
- (1) The Compliance Department shall provide each member of the Board, for his review, copies of all transcripts, exhibits received in evidence and decisions in all disciplinary actions and copies of all settlements concerning such Member or employee of a Member, together with any arguments filed on appeal and appeal decisions in connection with such disciplinary actions.
  - (2) The Board, if it determines that consideration of expulsion or withdrawal of Membership or access to the Trading Platform and/or the Exchange Floor, is warranted, may issue a written notification (a **Notification**) to the Member or employee of a Member within a reasonable time of receiving such a referral from the Compliance Department, informing them that the Board is considering expulsion or withdrawal of Membership or of access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor, as the case may be, and the reasons for it considering this option.
  - (3) The Member or employee of a Member shall within twenty (20) Business Days of such Notification submit to the Board a statement of reasons in support of its continued Membership, access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor, as the case may be (the **Statements**) and may at the same time request a hearing before the Board.
  - (4) Within five (5) Business Days of such a Statement being filed with the Board, the CCO shall schedule a hearing to consider the issue of expulsion or withdrawal.
  - (5) The hearing shall be convened within fifteen (15) Business Days of such Statement being filed, unless good cause is shown to justify a delay of such hearing.
  - (6) If no hearing is requested, the Board shall render a decision on the documents provided to it under paragraphs (C)(1) to (3) of this Rule 7.30.
  - (7) A Member or employee of a Member shall have the right to be heard before the Board and to be represented by a lawyer or any other person.

- (8) Promptly following the hearing, the entire Board shall by majority vote render a decision as to whether or not to expel the Member or employee of a Member from Membership or withdraw access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor, as the case may be.
- (9) The decision of the Board shall be communicated immediately to the Member or employee of the Member and to the Compliance Department and shall include a statement of findings and conclusions with respect to its decision, the reason(s) for the decision and the effective date of such decision. This decision shall be deemed the final decision of the Exchange.

### 7.31 Summary Action for Floor and Other offences

- (A) **Breaches of Decorum or Attire Rules.** The CEO or any Exchange employee designated by the CEO as so empowered may impose summarily on any Floor Member or any person under the control of a Member, a warning letter and/or fine of not more than three thousand five hundred dollars (\$3,500) for each breach of any Rules relating to decorum or attire on the Exchange Floor or in any part of the Exchange premises, having regard to the seriousness of the breach and whether it was deliberate or reckless
- (B) **Other Floor Offences and Other Offences.** The CEO or any Exchange employee designated by the CEO as so empowered may impose summarily on any Member or any person under the control of a Member, a warning letter and/or fine of not more than three thousand five hundred dollars (\$3,500), having regard to the seriousness of the Rule Breach and whether it is was deliberate or reckless for:
  - (1) failure by an Authorised Terminal User to undertake prescribed training (Rule 2.2(B)); or
  - (2) in the case of Floor Members, each breach of Rule 6.9 (Telephone Calls) or Rule 6.27 (Floor and General Trading Offences).
- (C) **Minimum Presence and Trading Offences.** The CEO or any Exchange employee designated by the CEO as so empowered may impose summarily on any Floor Member a warning letter and/or fine of not more than thirty thousand dollars (\$30,000) for any breach by that Floor Member of Rules 6.6 and/or 6.7.
- (D) The official imposing a fine shall issue a notice of fine (a **Notice of Fine**) in a form to be prescribed by the Exchange, which shall be served on the Respondent in accordance with Rule 7.10, notifying him of the offence committed and the fine to be imposed.
- (E) Any warning letter or fine imposed in accordance with paragraph (A) of this Rule 7.31 may be appealed to the Disciplinary Committee by filing a written request with the Membership Department within ten (10) Business Days of service of the warning letter and/or the Notice of Fine. The request should set out the reason for the appeal and attach any relevant documents. The Disciplinary Committee shall adopt procedures in accordance with Rule 7.26, modified as it deems appropriate to the circumstances of the case before it. It shall affirm, modify or reverse the penalty appealed and shall issue its decision in writing within thirty (30) Business Days of the appeal.
- (F) Unless it is subject to an appeal, any fine imposed in accordance with paragraph (A) of this Rule 7.31 shall be due and payable within ten (10) Business Days of service of the Notice of Fine. Where a determination has been made by the Disciplinary Committee following an appeal, such a determination shall be final ten (10) Business Days after notice of it is given to the Member or person under the control of the Member, and any fine imposed as a result of such determination shall be due and payable within ten (10) Business Days after notice of the determination is given to the Member.

- (G) In addition to any sanctions provided in any other Paragraph in this Rule 7.31, the CEO may summarily remove, or cause the removal of, any employee of a Floor Member if that employee commits a Floor Offence as described in Rule 6.27 which, in the opinion of the CEO, either involves a physical altercation or otherwise is sufficiently disruptive to warrant such summary removal. Any person summarily removed from the Exchange Floor pursuant to the provisions of this Rule 7.31 may not return to the Exchange Floor for such period as may be determined by the CEO, which period shall not exceed two (2) Business Days in addition to the day the offence was committed.
- (H) Action taken by the CEO or any Exchange employee designated by the CEO shall not be subject to the provisions of this Rule 7.31 in respect of procedures for disciplinary proceedings.

### **7.32 Trading Badges and Training**

- (A) The failure of a Floor Member to withdraw an individual's Trading Badge on termination of his authorisation as an Authorised Terminal User on the Exchange Floor as required by paragraph (B) of Rule 6.6, or on revocation of his registration pursuant to paragraph (A) of this Rule 7.32, may result in the issue of a summary fine against the Member in the amount of one hundred dollars (\$100) per Trading Day for each day of non-compliance with this paragraph (A) of Rule 7.32.
- (B) A failure by a Floor Member's Authorised Terminal User to wear a Trading Badge, or to wear the Trading Badge in a prominent position as required by paragraph (B) of Rule 6.6, may result in the issuance of a summary fine by the CCO against the Authorised Terminal User in the amount of one hundred dollars (\$ 100) and suspension from the Exchange Floor until the fine is paid and the Trading Badge displayed. Notice of such fine shall also be given to the Member who employs the Authorised Terminal User. Such Floor Member shall be responsible for the payment of such fine in the manner provided in Rule 7.35 if the Authorised Terminal User defaults in his payment.
- (C) Three breaches of Rule 2.2(B) within one (1) calendar year is sufficient cause for the CCO or his designee summarily to revoke the status of the individual as an Authorised Terminal User of a Floor Member.

### **7.33 Member responsibility**

- (A) Notwithstanding any fine assessed pursuant to Rule 7.32, a Member who fails to provide the Exchange upon request with details of any Authorised Terminal User shall be liable for a summary fine of two hundred and fifty dollars (\$250) per Business Day for each day the Authorised Terminal User is not so notified.
- (B) Such fine shall be paid to the Exchange upon service of an assessment from the Membership Department or the Compliance Department.
- (C) Three (3) breaches of this Rule 7.33 within one (1) calendar year is sufficient cause for formal disciplinary action to be taken.

### **7.34 Sanctions against Authorised Terminal Users**

- (A) The CCO or his designee shall have the power and authority to inquire into and to investigate the employment and conduct of, and functions performed by, all Authorised Terminal Users, whether employees or agents of Members.
- (B) Penalties resulting from formal disciplinary proceedings against an Authorised Terminal User may be imposed as a result of a Notice of Settlement or by a Decision of a Hearing Panel and may include:
  - (1) suspension or permanent revocation of authority as an Authorised Terminal User; and

- (2) a fine not to exceed fifty thousand dollars (\$50,000) for each Rule breach.
- (C) Authorised Terminal Users shall also be personally liable for applicable summary fines imposed pursuant to Rule 7.31 or Rule 7.32.
- (D) Members shall be responsible for any fine issued to their employees during their tenure pursuant to this Rule 7.34, provided however that a Hearing Panel may waive such responsibility if it determines that the Member did not have knowledge of the employee's conduct, and that a substantial injustice would result from imposing responsibility for a fine on the Member.

### **7.35 Summary fines: payment and appeals**

- (A) Summary fines imposed pursuant to Rules 7.32 and 7.33 shall be payable to the Exchange within ten (10) Business Days of notice of such fine being given to the employee or Member.
- (B) Summary fines imposed pursuant to Rules 7.32 and 7.33 may be appealed as provided for in paragraph (E) of Rule 7.31.

### **7.36 Member summary suspension**

- (A) If, at any time, the CEO or his designee or the CCO or his designee has a reasonable belief that immediate action is necessary to protect the best interests of the Exchange, he may suspend, or take other summary action against, an individual or entity that is subject to the jurisdiction of the Exchange. Such action may be taken in circumstances including but not limited to, the following:
  - (1) notification of any suspension, expulsion, revocation or restriction of Membership or trading privileges, through an adverse determination, voluntary settlement or otherwise, by any court, commodity or securities exchange or related clearing organisation, the DFSA or any other regulator, or any other regulatory or self-regulatory or other business or professional association;
  - (2) notification of other DFSA action against an individual or firm (based on an individual's actions);
  - (3) notification of any finding of guilt to a crime involving fraud, deceit, theft, embezzlement, gambling or other such act; or
  - (4) upon application by the Compliance Department, any other circumstance where the CEO or his designee determines there is a reasonable basis to believe that the Respondent:
    - (a) has committed a breach of the Rules constituting a Major Offence involving honesty or integrity; and
    - (b) is reasonably likely to do so again unless summary action is taken.
- (B) Any suspension or other summary action taken pursuant to this Rule 7.36 shall be taken in accordance with the following procedure:
  - (1) any action under this Rule 7.36 may be taken without notice or a hearing, where the Respondent waives notice or hearing, or when the CEO or his designee or the CCO or his designee determines, in his sole discretion, that the furnishing of notice or an opportunity for a hearing, or both, before such suspension or other summary action is taken, is not practicable under the circumstances;
  - (2) whenever practicable, the Respondent shall be served with a notice before any action is taken;

- (3) such notice shall state the circumstance giving rise to the summary action and the date, time and place of the hearing, and shall notify the Respondent of the right to legal representation at such hearing and all subsequent proceedings;
  - (4) in any case where the CEO or his designee has taken action against the Respondent without prior notice or hearing because of impracticability, the Exchange shall promptly give the Respondent notice of:
    - (a) the action taken;
    - (b) the reasons for it being taken;
    - (c) the effective date, time and duration of the action; and
    - (d) that, upon written request by a specified date, a hearing will be held to determine if action was and is necessary to protect the best interest of the Exchange.
- (C) Any hearing held pursuant to this Rule 7.36 shall be before a panel of the Disciplinary Committee. The panel shall adopt procedures in accordance with Rule 7.18, modified as it deems appropriate, provided however that for actions taken as a result of paragraphs (A)(1), (2) or (3) of this Rule 7.36, paragraph (A)(7) of Rule 7.18 shall not apply.
- (D) Promptly following the hearing provided for in this Rule 7.36, the hearing panel shall issue a written decision and shall provide a copy of the decision to the Respondent.
- (E) The decision shall include:
- (1) a description of the summary action taken;
  - (2) the reasons for the summary action;
  - (3) a brief summary of the evidence produced at the hearing;
  - (4) its findings and conclusions;
  - (5) a determination that the summary action should be affirmed, modified or reversed; and
  - (6) a declaration of any action to be taken and the effective date and duration of such action.
- (F) A Respondent against whom summary action has been taken pursuant to this Rule 7.36 may appeal such action to the Appeal Committee, which shall adopt procedures in accordance with Rules 7.22 to 7.26, modified as it deems appropriate.
- (G) Any decision of the Appeal Committee is the final decision of the Exchange and shall be effective immediately upon being served upon the Respondent.
- (H) A Respondent suspended under this Rule 7.36 may apply for reinstatement at any time within one (1) year of the date of his suspension, but thereafter may not apply to be reinstated.
- (I) Any application for reinstatement shall be filed with the Membership Department. Written notice of the time and place of the meeting of the Board at which the application for reinstatement is to be considered shall be sent to the suspended Member and to the Membership Department not less than five (5) Business Days prior to the meeting. The vote of a majority of the Board present and voting is required to reinstate the suspended Member.

### 7.37 Summary procedures for denial of access to the Trading Platform

- (A) The following events (each a **Failure**) shall be grounds for summary denial of access to the Trading Platform:
- (1) any representation, warranty or covenant of a Member ceases to be true and accurate;
  - (2) an Authorised Terminal User fails to comply with any Rule which applies to them;
  - (3) a Member or Authorised Terminal User uses the Trading Platform from a jurisdiction other than those permitted by the Exchange;
  - (4) a Member fails to maintain a clearing arrangement acceptable to the Exchange;
  - (5) a Member fails to pay the Exchange the fees due on any transaction as provided by the applicable fee schedule; or
  - (6) as a result of any other conduct by a Member or Authorised Terminal User, the Exchange considers it necessary to take action to protect the Exchange, its markets or other Members or Customers.
- (B) In the event of such a Failure, the Exchange may, without limitation, take any or all of the following actions:
- (1) terminate or restrict a Member's access to the Trading Platform;
  - (2) close out all of a Member's open positions;
  - (3) cancel any or all of the orders entered by an Authorised Terminal User into the Exchange;
  - (4) treat any or all of a Member's obligations to the Exchange as immediately due and payable; and
  - (5) set off any obligations of the Exchange to a Member against any of that Member's obligations to the Exchange.
- (C) Actions taken pursuant to paragraph (B) of this Rule 7.37 (a **Summary Action**) shall be the final action of the Exchange if the Member or Authorised Terminal User does not request a review when and as hereinafter provided.
- (D) The CEO or his designee or the CCO or his designee shall determine when a Failure has occurred and any Summary Action that will be taken by the Exchange without prior notice to the Member or Authorised Terminal User or a hearing. The Exchange shall provide the Member or Authorised Terminal User with written notice of a Summary Action via electronic mail or facsimile communication, which shall be sent to the Member or Authorised Terminal User in accordance with the current contact information on file at the Exchange for the Member or Authorised Terminal User, and such notice shall be deemed to be received by the Member or Authorised Terminal User upon successful transmission of a facsimile communication or, in the case of an electronic mail communication, one (1) Business Day following an electronic mail message. Such notice shall specify the date of the Failure for which the Summary Action is being imposed and the provisions of any applicable agreement or other basis for the Summary Action. Within ten (10) Business Days of receipt of the notice, the Member or Authorised Terminal User may submit a written request to the Exchange to review the Summary Action taken and any such request shall specify the basis for such a review.

- (E) The chairman of the Membership Committee shall appoint a Hearing Panel to hear and consider a request for review made pursuant to paragraph (G) of this Rule 7.37 at a hearing to be held promptly after the Exchange has received such a request.
- (F) The Hearing Panel shall follow procedures in accordance with Rule 7.26, modified as it deems appropriate. A hearing pursuant to this Rule 7.37 may, at the discretion of the Hearing Panel, be conducted by telephone.
- (G) The Hearing Panel shall issue a written decision containing the following:
  - (1) a description of the Failure and Summary Action taken by the Exchange as provided in paragraphs (A) to (F) of this Rule 7.37;
  - (2) a summary of the evidence produced at the hearing;
  - (3) a statement of its findings and conclusions with respect to the Failure; and
  - (4) its conclusion concerning whether the Summary Action was appropriate or its imposition of a different Summary Action, if any.

Such decision shall be the final action of the Exchange and shall not be subject to further appeal within the Exchange.

- (H) An Member or Authorised Terminal User suspended or terminated from access to the Trading Platform pursuant to this Rule 7.37 may apply for reinstatement if at the time of the application the Member or Authorised Terminal User can demonstrate compliance with all material terms of applicable agreements with the Exchange. The determination of such compliance and possible readmission shall be made by and is within the sole discretion of the CEO.
- (I) Failure of a Member to comply with Rule 4.2(A)(3) will result in immediate suspension of such Member's membership privileges on the Exchange (and the privileges of any successor to such Member) until the Member complies with those reporting requirements in all respects. Such compliance includes the filing of all returns that were required to have been filed under section 6045 of the United States Internal Revenue Code but were not filed or were filed improperly. Failure of a Member to comply with Rule 4.7(G)(3) will result in immediate suspension of such Member's membership privileges on the Exchange (and the privileges of any successor to such Member) until the Member complies with those reporting requirements in all respects.
- (J) Suspension and denial of access under paragraph (I) of this Rule 7.37 may be appealed in accordance with the appeal provisions in Rule 7.36 provided that such an appeal may only be directed at determining whether the Member is failing to comply with its obligations under Rule 4.2(A)(3) and/or Rule 4.7(G)(3) or that such obligations do not apply to that Member. There may be no appeal on a ground that suspension and/or denial of access is/are not an appropriate remedy notwithstanding a failure to comply with such obligations.
- (K) Neither paragraphs (H) and (I) of Rule 7.36 nor paragraphs (C) to (H) of this Rule 7.37 shall apply in respect of any suspension and denial of access under paragraph (I) of this Rule 7.37.
- (L) Nothing in this Rule 7.37 shall preclude any action against a Member pursuant to the Rules.

### **7.38 Notification of Final Disciplinary Action involving financial harm to a Customer**

- (A) For the purposes of this Rule 7.38, **Final Disciplinary Action** means any decision by or settlement with the Exchange in a disciplinary matter which cannot be further appealed at the Exchange.
- (B) Upon a Final Disciplinary Action in which the Exchange finds that a Member has committed a Rule breach that involved a transaction for a Customer, whether executed or not, which resulted in financial harm to the Customer:

- (1) If the Member is not a Clearing Member, the Exchange shall promptly provide written notice of the disciplinary action to the Clearing Member that cleared the transaction;
  - (2) a Clearing Member that receives a notice under paragraph (B)(1) of this Rule 7.38 shall promptly provide written notice of the disciplinary action to the Customer as disclosed on its books and records; and
  - (3) if the Customer is another Clearing Member, such Clearing Member shall promptly provide the notice to the Customer as disclosed on its books and records.
- (C) A written notice required by paragraph (B) of this Rule 7.38 must include:
- (1) the principal facts of the disciplinary action;
  - (2) a statement that the Exchange has found that the Member has committed a Rule breach that involved a transaction for the Customer, whether executed or not; and
  - (3) a statement that the Rule breach resulted in financial harm to the Customer.

**7.39 Notification to the DFSA of Disciplinary Action**

- (A) The Compliance Department shall forthwith notify the DFSA of any disciplinary action taken under this Chapter 7, together with a statement of the reason(s) why such disciplinary action was taken.
- (B) The Compliance Department shall forthwith notify the DFSA:
- (1) of any appeal made pursuant to either Rule 7.22 or Rule 7.35;
  - (2) of the outcome of such appeal.