

## SECTION VII DISCIPLINE AND ENFORCEMENT

### 7.1 Disciplinary and Enforcement Procedures – General

All Participants, Authorized Brokers, Clearing Members, Customers, and Authorized Users, and applicable Persons are subject to the Exchange’s jurisdiction. Any Person using the Login Credentials of any other Person that is alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any Rule or Applicable Law for which the Exchange maintains disciplinary jurisdiction is subject to this Section VII. Except as otherwise provided in the Rules, no Exchange Official will interfere with or attempt to influence the process or resolution of any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action (collectively, “**Disciplinary Action**”). Any Person subject to a Disciplinary Action may be represented by counsel or any other representative of its choosing (other than an Exchange Official or any person substantially related to the underlying investigation, such as a material witness or Respondent), at its own expense, in all stages of such Disciplinary Action.

### 7.2 Process Considerations

#### 7.2.1 Compliance Department

The Compliance Department is appointed and authorized by the Chief Executive Officer to provide market surveillance and investigation of trading activities on the Exchange to ensure compliance with the Rules and Applicable Law. Any member of the Compliance Department must recuse himself or herself and notify the Chief Regulatory Officer of the recusal if such member has a relationship of a type listed in Rule 2.6.1(a) with a Respondent in any Disciplinary Action. Where the Chief Regulatory Officer member has a relationship of a type listed in Rule 2.6.1(a) with a Respondent in any Disciplinary Action, the Chief Regulatory Officer shall recuse himself or herself from such Disciplinary Action, and the Board shall appoint an individual without such conflict to serve as Chief Regulatory Officer for the specific Disciplinary Action giving rise to the conflict. The Compliance Department consists of two functions:

- (a) Enforcement shall be conducted by the Surveillance Team and the Compliance Manager. The Surveillance Team will monitor the market to identify exceptions that may indicate a possible basis for finding that a violation of the Rules has occurred or will occur and provide information of such exceptions to the Compliance Manager. The Surveillance Team and the Compliance Manager shall consist of Exchange employees whose interests do not conflict with their enforcement duties. The Surveillance Team and the Compliance Manager may not operate under the direction or control of any

Person(s) with trading privileges. The Compliance Manager is authorized to:

- i. initiate and conduct investigations;
  - ii. prepare Investigation Reports and make recommendations concerning initiating disciplinary proceedings;
  - iii. prosecute alleged violations within the Exchange's disciplinary jurisdiction; and
  - iv. represent the Exchange on appeal from any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.
- (b) The Chief Regulatory Officer, assisted by other Compliance Department personnel and Exchange employees, shall be responsible for discharging the duties allocated to it in Rule 7.3.

#### 7.2.2 Third-Party Enforcement

The Exchange may delegate any of its rights and responsibilities herein to a Regulatory Service Provider.

#### 7.2.3 Expense Liability

- (a) At the discretion of the Exchange, any Respondent found in violation of the Rules may be required to pay to the Exchange any and all expenses incurred as a result of the investigation of the violation and prosecution of such Respondent. This assessment is in addition to any monetary fines imposed for the Rule violation(s).
- (b) If a hearing has been held in accordance with Rule 7.3.9, the Hearing Panel may order a Respondent to pay some or all of the costs associated with the disciplinary proceedings, including costs that the Hearing Panel believes were unnecessarily caused by the Respondent, regardless of the outcome of any disciplinary proceeding. Costs may include costs associated with the inquiry or investigation, the prosecution by the Compliance Department, legal and professional assistance, the hearing, and administrative and other expenses incurred by the Hearing Panel.

### 7.3 **Disciplinary Matters**

#### 7.3.1 Investigations

- (a) The Compliance Manager will investigate any enforcement matter within the Exchange's jurisdiction that is brought to the attention of

the Compliance Manager.— The Compliance Manager will commence an investigation upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the Exchange that, in the judgment of the Compliance Manager, indicates a possible basis for a finding that a violation has occurred or will occur. The Compliance Manager shall determine the nature and scope of the investigations in his or her sole discretion and will operate independently of the commercial interests of the Exchange. Absent mitigating circumstances, the Compliance Manager must complete an investigation within twelve (12) months after the date the investigation is opened. Permissible mitigating circumstances include the complexity of the investigation, the number of firms or individuals involved as potential respondents, the number of potential violations to be investigated and the volume of documentation and data that must be analyzed.

- (b) Upon request by the Compliance Manager, each Person subject to the Exchange’s jurisdiction:
- i. is obligated to appear and testify and respond in writing to inquiries within the time period required by the Compliance Manager in connection with: 1) any Rule; 2) any inquiry or investigation; 3) or any preparation by and presentation during a Disciplinary Action;
  - ii. is obligated to produce books, records, papers, documents or other tangible evidence in its, his or her possession, custody or control within the time period required by the Compliance Manager in connection with: 1) any Rule; 2) any inquiry or investigation; 3) or any preparation by and presentation during a Disciplinary Action;
  - iii. may not impede or delay any Disciplinary Action.

### 7.3.2 Reports of Investigations

The Compliance Manager will submit a written report of each investigation to the Chief Regulatory Officer and maintain a log of all investigations and their disposition. The written report of the investigation (the “**Investigation Report**”) will include the reasons for initiating the investigation, all relevant facts and evidence gathered, analysis and conclusions, the Respondent’s disciplinary history at the Exchange, and will consist of one of the following recommendations:

- (a) closing the investigation without further action;
- ~~(b) negotiating a settlement;~~

- ~~(b) resolving the investigation through an informal disposition, including the issuance of a warning letter. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction, however, the investigative report must include a copy of any warning letter and no more than one warning letter for the same potential violation may be issued to the same Person during a rolling 12-month period;\_\_\_\_\_~~
- (c) ~~entering into~~imposing a summary action (pursuant to Rule 7.4);
- ~~(d) negotiating a settlement, however, if settlement cannot be reached, preparing and serving a notice of charges to initiate a formal disciplinary proceeding; or~~
- ~~(d)(e) preparing and serving a notice of charges to initiate a formal disciplinary proceeding, resolving the investigation through an informal disposition, including the issuance of a warning letter. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction, however, the investigative report must include a copy of any warning letter and no more than one warning letter for the same potential violation may be issued to the same Person during a rolling 12-month period.\_\_\_\_\_~~

### 7.3.3 Review of Reports of Investigations

After the completion of the Investigation Report ~~and the receipt of any submission made by the Respondent pursuant to Rule 7.3.4~~, the Chief Regulatory Officer will (i) review the Investigation Report or (ii) establish a Review Panel pursuant to Rule 7.3.8 and forward the Investigation Report to such Panel. The Chief Regulatory Officer or Review Panel, as appropriate, will review an Investigation Report and any submission made by the Respondent pursuant to Rule 7.3.4. ~~P~~romptly after receipt, the Chief Regulatory Officer or Review Panel will ~~and~~ determine for each Respondent whether to authorize:

- ~~(a) the informal disposition disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted;~~
- ~~(b)~~(a) the closing of the investigation without any action because no reasonable basis exists to believe that a violation within the Exchange’s jurisdiction has occurred or is about to occur; ~~or~~
- (b) informally disposing of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted;
- (c) imposing a summary action (pursuant to Rule 7.4);

~~(d) entering into a negotiated settlement. The Chief Regulatory Officer will, in his or her discretion, (i) determine whether to accept or reject the settlement offer or (ii) if a Review Panel has been established in accordance with Rule 7.3.8, determine whether to accept or reject the offer and forward the basis for his or her recommendation to the Review Panel for final determination; or~~

~~(e) the commencing of formal~~ disciplinary proceedings because a reasonable basis exists to believe that a violation within the Exchange’s jurisdiction has occurred or is about to occur.

~~(e) —~~.

#### 7.3.4 Opportunity to Respond

~~After the completion of the Investigation Report, t~~The Compliance Department may, in its discretion, notify the Respondent(s) that formal disciplinary charges are recommended and allow the Respondent to submit, within a specified time period, an offer of settlement or a written statement explaining why disciplinary proceedings should not be instituted or why one or more of the charges should not be brought.

#### 7.3.5 Service of Notice of Charges

(a) Once the Chief Regulatory Officer or Review Panel, as appropriate, authorizes disciplinary proceedings, the Compliance Department will prepare and serve a notice of charges that will provide as follows:

- i. state the acts, practices or conduct that the Respondent is alleged to have engaged in;
- ii. state the Rule or provision of Applicable Law alleged to have been violated or about to be violated;
- iii. state the proposed sanctions;
- iv. advise the Respondent of its right to a hearing;
- v. advise the Respondent that he has the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process, other than an Exchange Official or any person substantially related to the underlying investigation, such as a material witness or Respondent;
- vi. state the period of time within which the Respondent can request a hearing on the notice of charges; included in the

answer to the notice of charges as described in Rule 7.3.6, which will not be less than twenty (20) days after service of the notice of charges;

- vii. advise the Respondent that any failure to request a hearing within the period stated, except for good cause as determined by the Chief Regulatory Officer or Review Panel, will be deemed to constitute a waiver of the right to a hearing; and
  - viii. advise the Respondent that any allegation in the notice of charges that is not expressly denied or deemed denied consistent with Rule 7.3.6 will be deemed to be admitted.
- (b) The service of notice upon the Respondent shall be deemed complete either personally or by leaving the notice at his or her place of business; by deposit in the United States mail, postage prepaid, via registered or certified mail addressed to the Respondent at the Respondent's last known place of business or residence. Service shall also be deemed complete via electronic mail to the Respondent's last known electronic mail address.

#### 7.3.6 Answer to Service of Notice of Charges

- (a) If the Respondent determines to answer a notice of charges, the Respondent must file a written answer within twenty (20) days after being served with such notice, or within such other time period as either stated in such notice of charges or if otherwise granted by the Chief Regulatory Officer or the Review Panel upon appropriate request from the Respondent. The Respondent must answer the notice of charges in writing as follows:
  - i. for each allegation set forth in the notice of charges, 1) admit such allegation, 2) deny such allegation, or 3) affirmatively state that the Respondent does not have and is unable to obtain sufficient information to admit or deny such allegation, which shall have the effect of a denial of such allegation;
  - ii. specify any specific facts that contradict the notice of charges;
  - iii. specify any affirmative defenses to the notice of charges;
  - iv. sign and serve the answer on the Chief Regulatory Officer; and
  - v. if applicable, request a hearing before a Hearing Panel.

- (b) Failure by the Respondent to timely serve an answer to the notice of charges will be deemed to be an admission to the allegations in such notice. Any allegation in a notice of charges that the Respondent fails to expressly deny will be deemed admitted. A general denial by the Respondent, without more, will not satisfy the requirements herein.

7.3.7 Settlement Offers After Notice of Charges

- (a) At any time after a notice of charges has been issued, a Respondent may ~~at any time~~ submit to the Compliance Department a written offer of settlement related to anticipated or instituted disciplinary proceedings.

- ~~(b)~~ If the Respondent submits the settlement offer any time before the Hearing Panel is formed pursuant to Rule 7.3.8, the Chief Regulatory Officer will, in his or her discretion, (i) determine whether to accept or reject the settlement offer or (ii) if a Review Panel has been established in accordance with Rule 7.3.8, determine whether to accept or reject the offer and forward the basis for his or herits recommendation to the Review Panel for final determination.

- ~~(b)(c)~~ If the Respondent submits the settlement offer any time after the Hearing Panel is formed pursuant to Rule 7.3.8, the Chief Regulatory Officer will forward his or her recommendation to the Hearing Panel for final determination.

- ~~(e)(d)~~ The Chief Regulatory Officer or Disciplinary Panel, as applicable, may permit the Respondent to settle disciplinary proceedings without admitting or denying the Rule violations if the Respondent consents to the entry of findings and sanctions imposed. When accepting the settlement offer, the Chief Regulatory Officer or Hearing Panel may not alter the terms of the offer unless the Respondent agrees. The offer of settlement must detail the Rule violations, including the basis for the conclusions of the Chief Regulatory Officer or Disciplinary Panel, as applicable, and any sanctions imposed. If a settlement offer is accepted without the agreement of the Chief Regulatory Officer, the decision should adequately support the Disciplinary Panel's acceptance of the settlement. If applicable, the decision must also include a statement that the Respondent has accepted the sanctions imposed without either admitting or denying the Rule violations.

- ~~(d)(e)~~ The acceptance of a settlement offer by either the Chief Regulatory Officer or Hearing Panel, as applicable, constitutes a waiver of the Respondent's right to notice, opportunity for a hearing and review, and appeal under the Rules. If the settlement offer is not accepted,



fails to become final, or is withdrawn by the Respondent, the matter will proceed without prejudice as if the offer had not been made and the offer and all documents related to it will not become part of the record.

7.3.8 Disciplinary Panels

- (a) A Review Panel may be established, in the sole discretion of the Chief Regulatory Officer, pursuant to Rule 7.3.3 to review a completed Investigation Report and determine whether a reasonable basis exists for finding a violation of the Rules and authorizing the issuance of a notice of charges.
- (b) If a Respondent requests a formal hearing on charges denied in the answer to the notice of charges per Rule 7.3.6, a Hearing Panel shall be convened, and a hearing will commence within sixty (60) days.
- (c) Each Disciplinary Panel, appointed by the Board at the recommendation of the Chief Regulatory Officer, shall be composed of not less than three individuals from among individuals with knowledge and experience in the Commodity or financial markets, who are not members of the Compliance Department or involved in any other stage of the same proceeding or the conduct giving rise to the alleged Rule violations. No group or class of market participants may dominate or exercise disproportionate influence on the Disciplinary Panel. The chair of the Disciplinary Panel will be an individual qualified to be a Public Director.
- (d) Within ten (10) days of being notified of the appointment of the Disciplinary Panel, either party may seek to disqualify any individual named to the Disciplinary Panel for any grounds provided in paragraph (c) above or Rule 2.6 by serving notice to the Chief Regulatory Officer. Legal counsel, other than the Chief Regulatory Officer, will decide the merits of any request for disqualification within his or her sole discretion. Such decision will be final and not subject to appeal. Legal counsel, other than the Chief Regulatory Officer, may also remove any member of the Disciplinary Panel for cause. Unless otherwise disqualified or removed for cause, the individuals on the Disciplinary Panel will serve until the related proceedings are completed. If a vacancy shall occur on a Disciplinary Panel after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter.

7.3.9 Hearings

- (a) Prior to the commencement of the hearing and upon written request, the Respondent will be given the opportunity to review all books,



records, documents, transcripts of testimony and other tangible evidence in the possession or under the control of the Exchange to be used by the Compliance Department to support the allegations and proposed sanctions in the notice of charges, except for any information that (i) is protected by attorney-client privilege or the work-product doctrine, (ii) was prepared by the Compliance Department or an employee of the Exchange but will not be offered in evidence in the disciplinary proceedings, (iii) may disclose a technique or guideline used in examinations or Disciplinary Actions or (iv) discloses the identity of a confidential source. The Compliance Department may redact, edit or code information that could adversely affect the competitive position of the person providing the information or if such information might compromise other investigations being conducted by the Compliance Department. However, the Compliance Department may not redact, edit or code information that would impair the Respondent’s ability to defend against allegations or proposed sanctions in the notice of charges.

- (b) The following Rules shall apply in each case presented before the Hearing Panel:
  - i. The Compliance Department shall prosecute the case.
  - ii. Formal rules of evidence do not apply.
  - iii. The Respondent has the power to cross-examine witnesses and present documentary evidence.
  - iv. The burden of proof is on the Compliance Department.
  - v. A majority vote of the Hearing Panel is needed to find a violation of the Rules.
  
- (c) No Person shall serve on the Hearing Panel unless that Person has agreed in writing that he or she 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 be obtained while serving as a member of the Hearing Panel, except for disclosures when reporting to the Board, the Compliance Department, upon request by the Commission or other governmental agency, or when compelled to testify in a judicial or administrative proceeding. The hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of the hearings, the Hearing Panel may appoint an expert to attend any hearing and assist in deliberations if such expert agrees to be subject to an appropriate confidentiality agreement.

- (d) The chair of the Hearing Panel shall conduct the hearing as he or she may deem appropriate. The chair of the Hearing Panel will determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered. Legal counsel, other than the Chief Regulatory Officer, will provide guidance to the chair of the Hearing Panel on the conduct of the hearing. At the hearing, the Hearing Panel or the Compliance Department and each Respondent may:
- i. appear personally or remotely;
  - ii. present evidence and facts determined relevant and admissible by the chair of the Hearing Panel;
  - iii. call and examine witnesses; and
  - iv. cross-examine witnesses called by other parties.
- (e) The Exchange will require Persons within its jurisdiction that are called as witnesses to appear personally or remotely at the hearing and produce evidence, and will make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.
- (f) If the Respondent fails to file an answer, has filed a general denial, or if any or all of the allegations in the notice of charges are not expressly denied in the Respondent’s answer, the chair of the Hearing Panel may limit evidence concerning any allegations not expressly denied in determining the sanctions to impose. If a Respondent fails to file an answer but appears at the hearing, the Respondent may not participate in the hearing (by calling or cross-examining witnesses, testifying in defense, presenting evidence concerning the notice of charges, or otherwise) unless the Hearing Panel determines that the Respondent had a compelling reason for failing to timely file an answer. If the Hearing Panel determines that the Respondent had a compelling reason for failing to timely file an answer, the Hearing Panel will adjourn the hearing and direct the Respondent to promptly file a written answer.
- (g) Reasonable notice, confirmed in writing, specifying the date, time, and place of the hearing will be given to Persons entitled or required to appear before the Hearing Panel. The Hearing Panel may impose sanctions on any Person that impedes or delays the progress of the hearing. Interlocutory appeals of rulings by the Hearing Panel or the chair of the Hearing Panel are not permitted.

- (h) Promptly following a hearing, the Hearing Panel will render a written decision based on the weight of the evidence contained in the record of the disciplinary proceedings. Pursuant to the written decision, the Hearing Panel may take the following actions or impose the following sanctions against the Respondent: (i) a warning letter, which shall indicate each specific Rule that the Respondent was found to have violated; (ii) a cease and desist order; and/or (iii) any sanctions or remedies prescribed in Rule 7.3.10. The Exchange will serve a copy of the written decision on the Respondent and the Compliance Department. The written decision will include the following information:
- i. the notice of charges or a summary of the charges;
  - ii. the answer, if any, or a summary of the answer;
  - iii. a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;
  - iv. a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other bases for such findings and conclusions with respect to each charge;
  - v. an indication of each specific Rule that the Respondent was found to have violated; and
  - vi. a declaration of all actions taken or sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions.
- (i) The Exchange will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription, and a copy of such recordings shall become a part of the record of such proceedings. If the Respondent requests a copy of all or portions of the recording of a hearing, the chairman of the Hearing Panel may, within his or her sole discretion, order the Respondent to pay the costs for transcribing the recording of the hearing.
- (j) The Respondent may appeal the Hearing Panel decision within twenty (20) days of receiving the order by filing a written notice of appeal pursuant to Rule 7.5.1. The order of the Hearing Panel's decision will become final upon expiration of twenty (20) days after

the order is served on the Respondent, and such final order will not be subject to appeal within the Exchange.

7.3.10 Sanctions

- (a) After notice and opportunity for hearing in accordance with Exchange Rules, the Exchange will impose sanctions if any Person (or any Person using the Login Credentials of any other Person)-is found to have violated or to have attempted to violate a Rule of the Exchange or provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction. Disciplinary sanctions imposed by the Exchange shall be commensurate with the violations committed and shall be clearly sufficient to deter recidivism or similar violations by other Persons. All sanctions must take into account the Respondent’s disciplinary history. The Exchange may impose one or more of the following sanctions or remedies:
- i. censure;
  - ii. limitation on trading privileges, ability to otherwise access Nodal Exchange, and/or other activities, functions or operations;
  - iii. suspension of trading privileges and/or ability to otherwise access the Nodal Exchange;
  - iv. fine;
  - v. restitution or disgorgement;
  - vi. termination of trading privileges and/or ability to otherwise access Nodal Exchange; or
  - vii. any other sanction or remedy deemed to be appropriate.
- (b) The Exchange may impose a fine of up to \$1,000,000 for each violation of Exchange Rules or a provision of Applicable Law. If a fine or other amount is not paid within thirty (30) days of the date that it becomes payable, then interest will accrue on the sum from the date that it became payable at the quoted prime rate plus three percent. The Exchange has sole discretion to select the bank on whose quotations to base the prime rate. Participant or Authorized Broker will be responsible for paying any fine or other amount imposed on, but not paid by, any of its traders, supervisors, or Customers.

**7.4 Summary Actions**

7.4.1 Summary Suspensions

- (a) At any time, the Chief Regulatory Officer, in consultation with the Regulatory Oversight Committee of the Board, may summarily suspend, revoke, limit, or condition a Participant’s right to access the Trading Platform or the association of a Customer, an Authorized User, or Authorized Broker with a Participant, or suspend access to the System or to the Exchange to any other Person subject to the Exchange’s jurisdiction. The Chief Regulatory Officer must reasonably believe that immediate action is necessary to protect the best interest of the Exchange or the marketplace, based on relevant circumstances including any of the following:
  - i. failure to satisfy requirements of Applicable Law;
  - ii. failure to pay fees or fines or arbitration awards; and/or
  - iii. any other reason or circumstance for which immediate action is necessary.
  
- (b) Whenever summary action pursuant to this Rule is proposed, the Respondent against whom the action is contemplated is to be notified at the earliest possible opportunity as appropriate considering the best interest of the marketplace. Such notice shall be served in accordance with Rule 7.3.5(b) and shall state:
  - i. the exact action taken or to be taken;
  - ii. the reasons for the action; and
  - iii. the time and date the action has or is to become effective as well as the duration of the action.
  
- (c) The Respondent may file a notice of appeal filed pursuant to Rule 7.5.1 seeking reinstatement within twenty (20) days after the notice of action is served on the Respondent. Otherwise, the summary action becomes final twenty (20) days after the notice of action is served on the Respondent. Filing of a notice of intent pursuant to this Rule shall not stay the Chief Regulatory Officer’s decision to deny access.

7.4.2 Summary Imposition of Fines

- (a) The Compliance Department may summarily impose a fine for each violation against any Person for:
  - i. failure to cooperate with the Compliance Department as required by the Rules;

- ii. failure to make timely and accurate submissions to the Exchange of notices, reports or other information required by the Rules (including Block Trade 15-minute Rule violations); or
  - iii. failure to keep any books and records required by the Rules.
- (b) The Compliance Department will give notice of any fine imposed that will specify:
- i. the violation of the Exchange Rule for which the fine is being imposed;
  - ii. the date of the violation for which the fine is being imposed; and
  - iii. the amount of the fine.
- (c) Within twenty (20) days of the service of the notice of the fine imposed, the Person must either pay the fine or file a notice of appeal pursuant to Rule 7.5.1. Unless timely notice of appeal is filed, the fine will become final upon expiration of twenty (20) days after the notice of fine is served on the Person.

## 7.5 Appeal from Hearing Panel Decisions and Summary Actions

### 7.5.1 Appeal Procedures

- (a) A Respondent found by the Hearing Panel to have violated a Rule or Applicable Law pursuant to Rule 7.3.9 or who is subject to any summary action imposed pursuant to Rule 7.4 may appeal the order or decision within the time permitted in Rule 7.3.9(j) or Rule 7.4, as applicable, by filing a notice of appeal with the Chief Regulatory Officer. The Compliance Department may also appeal any order by a Hearing Panel prior to the order becoming final pursuant to Rule 7.3.9(j). Except for summary suspensions imposed pursuant to Rule 7.4.1, Hearing Panel orders and summary imposition of fines shall be suspended while the appeal is pending.
- (b) The notice of appeal must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the Respondent objects. The Respondent may give notice of appeal on the grounds that:
- i. the order or decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules; or

- ii. the order or decision exceeded the authority or jurisdiction of the Hearing Panel or the Exchange.
- (c) The Chief Regulatory Officer will forward copies of any notice of appeal received by it to all parties to the disciplinary proceeding or summary action, as the case may be, except the appellant. On or before the 20th day after filing a notice of appeal, the appellant must file with the Chief Regulatory Officer and serve on the ~~Compliance Department~~ appellee a brief supporting the notice of appeal and documents supporting the brief. On or before the 20th day after the date on which the appellant serves supporting brief, the appellee must file its brief in opposition with the Chief Regulatory Officer and serve its brief in opposition on ~~with~~ the ~~Compliance Department~~ appellant.
- (d) Within thirty (30) days after the last appeals submission filed, the Board will appoint an Appeals Committee at the recommendation of the Chief Regulatory Officer, which shall be composed of not less than three individuals from among individuals with knowledge and experience in the ~~electric power~~ Commodity or financial markets, who are not members of the Compliance Department or involved in any other stage of the same proceeding or the conduct giving rise to the alleged Rule violations. No group or class of market participants may dominate or exercise disproportionate influence on the Appeals Committee. The chair of the Appeals Committee will be an individual qualified to be a Public Director.
- (e) Within ten (10) days of being notified of the appointment of the Appeals Committee, either party may seek to disqualify any individual named to the Appeals Committee for any grounds provided in paragraph (d) above or Rule 2.6 by serving notice to the Chief Regulatory Officer. Legal counsel, other than the Chief Regulatory Officer, will decide the merits of any request for disqualification within his or her sole discretion. Such decision will be final and not subject to appeal. Legal counsel, other than the Chief Regulatory Officer, may also remove any member of the Appeals Committee for cause. Unless otherwise disqualified or removed for cause, the individuals on the Appeals Committee will serve until the related proceedings are completed. If a vacancy shall occur on an Appeals Committee after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter.

#### 7.5.2 Review by the Appeals Committee

- (a) The Appeals Committee will hold a hearing before all the members of such Appeals Committee to allow parties to present oral



arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeals Committee may appoint individuals to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Committee will not be bound by any evidentiary or procedural rules or law. Except for good cause shown, the review by the Appeals Committee shall only consider the record before the Hearing Panel, the written exceptions filed by the parties, and the oral and written arguments of the parties.

- (b) Upon completing its review, the Appeals Committee may affirm, modify or reverse the Hearing Panel decision or summary action under appeal. Modifications by the Appeals Committee may include increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Rules, remanding the matter to the same or a different Hearing Panel for further disciplinary proceedings, or ordering a new hearing.
- (c) As promptly as reasonably possible following its review, the Appeals Committee will issue a written decision based on the weight of the evidence before the Appeals Committee. To the extent that the Appeals Committee reaches a different conclusion from that of the Hearing Panel, the written decision will include the following information:
  - i. the notice of charges or a summary of the charges;
  - ii. the answer, if any, or a summary of the answer;
  - iii. a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;
  - iv. a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other bases for such findings and conclusions with respect to each charge;
  - v. an indication of each specific Rule that the Respondent was found to have violated; and
  - vi. a declaration of all sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions.

- (d) The order by the Appeals Committee will be the final action of the Exchange and will not be subject to further appeal within the Exchange.

## **7.6 Rights and Responsibilities After Suspension or Termination**

- 7.6.1 When a Person's right to access the Exchange, or its association with a Customer, an Authorized User, or Authorized Broker, is suspended for a period of twelve (12) months or less, none of its rights (including the right to hold oneself out to the public as a Participant; enter Orders into the Exchange; and to receive certain rates for fees, costs, and charges) will apply during the period of the suspension, except for the right of the Person in question to assert claims against others as provided in the Rules. Any such suspension will not affect the rights of creditors under the Rules or relieve the Person in question of its, his, or her obligations under the Rules to perform any Transactions entered into before the suspension, or for any Exchange fees, costs or charges incurred during the suspension. The Exchange may discipline a suspended Person under this Section VII for any violation of Applicable Law committed by such Person before, during, or after the suspension.
- 7.6.2 When a Person's right to access the Exchange, or its association with a Customer, an Authorized User, or Authorized Broker, is terminated, all of its rights will terminate, except for the right of the Person in question to assert claims against others, as provided in the Rules. Any such termination will not affect the rights of creditors under the Rules. A terminated Person may only seek to reinstate its right to access the Exchange by filing an application in accordance with Section III of the Rules. The Exchange will not consider the application of a terminated Person if such Person continues to fail to appear at Disciplinary Actions without good cause or continues to impede the progress of Disciplinary Actions.
- 7.6.3 A suspended or terminated Person remains subject to the Rules and the jurisdiction of the Exchange for acts and omissions prior to the suspension of termination, and must cooperate in Disciplinary Actions as if the suspended or terminated Person still had the right to access the Exchange, or was still associated with- a Person, as the case may be.

## **7.7 Notice to the Respondent, the CFTC, and the Public**

The Exchange will provide written notice of Disciplinary Actions to the applicable Persons and the CFTC consistent with CFTC Regulations. Whenever the Exchange suspends, expels, fines, or otherwise disciplines, or denies any Person access to the Exchange, the Exchange will make the public disclosures required by CFTC Regulations.