

Rule Self-Certification

July 15, 2009

Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St., N.W.
Washington, D.C. 20581

Re: Amendments to NFX By-Laws
Reference File SR-NFX-2009-12

Ladies and Gentlemen:

Pursuant to Section 5c(e)(1) of the Commodity Exchange Act, as amended ("Act"), and Section 40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, the NASDAQ OMX Futures Exchange, Inc. ("NFX" or "Exchange") hereby submits the attached amendments to its disciplinary rules 401-414. Specifically, the proposed rules adopt a hearing panel and hearing attorney for the purpose of conducting hearings pursuant to Rule 405. Additionally, various floor decorum rules are deleted as unnecessary. Finally, the proposal adopts a new Rule 414 concerning actions against non-members. The amendments will become effective on July 17, 2009.

There were no opposing views among NFX's Board of Directors, members or market participants. NFX hereby certifies that these rule amendments comply with the Commodity Exchange Act and regulations thereunder.

Regards,



Ben Craig
President

cc w/att: Mr. Glenn Swann
Mr. J. Goodwin

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O.F.T.C.
OFFICE OF THE SECRETARIAT

Exhibit A

New language is underlined and deletions are struck through.

NASDAQ OMX Futures Exchange, Inc. Rules

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DISCIPLINARY RULES (Rules 401- 414)

Rule 401. Disciplinary Rules

(a) Any member, member organization, or any person associated with any member or member organization (the "respondent") who is alleged to have violated or aided and abetted a violation of the By-Laws and Rules of the Exchange or any interpretation thereof, or the rules, regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction in accordance with the provisions of these disciplinary rules.

(b) A member or a general partner, officer, director (or a person occupying a similar status or performing similar functions) of a member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by any person under his supervision or control or by the member organization with which he is affiliated, as though such violation were its own. A member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its general partners, officers, directors, persons occupying a similar status or performing similar functions, or employees or by a member or other person who is associated with such member organization, as though such violation were its own.

(c) Any member, member organization, or any person associated with a member or member organization, shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's membership or the termination of the employment by or the association with a member or member organization of such person, or the deregistration of a member organization from the Exchange; provided that the Exchange serves written notice to such party within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to such termination or deregistration.

(d) For the purpose of the Disciplinary Rules, the term "person associated with a member or member organization" or "associated person of a member or member organization" shall mean "any general partner, officer, or director of such member organization (or any person occupying a similar status or performing similar functions), any person directly or

indirectly controlling, controlled by, or under common control with such member or member organization, or any employee of such member or member organization."

Rule 402. Investigation and Authorization of Complaint

~~(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, the President or other Exchange officials designated by the President, upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation, upon the receipt of a request from the Commission, its Executive Director or his designee, or upon the discovery or receipt of information by the Exchange which, in the judgment of the Exchange staff, indicates a possible basis for finding that a violation has occurred.~~

~~(b) Cooperation with Investigation or Examination. Each member, member organization, or person associated with a member or member organization shall promptly comply with any request of the Exchange's Market Surveillance Department, Examinations Department, Enforcement Department or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.~~

~~(c) Right to Counsel. A member, member organization or person associated with a member or member organization shall have the right to be represented by counsel or any other representative of his choosing (other than a person who is a subject of the same or a related investigation or disciplinary proceeding) in connection with requests for documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.~~

~~(d) Report.~~

~~(1) Whenever the Market Surveillance Department or the Examinations Department determines from surveillance or from an investigation that a reasonable basis exists for finding a violation within the disciplinary jurisdiction of the Exchange, it shall submit a written investigation report to the Business Conduct Committee including the reason the investigation was initiated, the membership interest of the person involved, a summary of the complaint, if any, the relevant facts, the staff's conclusions and a recommendation as to whether the Business Conduct Committee should proceed with the matter.~~

~~(2) If after conducting an investigation the Market Surveillance Department or the Examinations Department has determined that no reasonable basis exists for finding a violation, it shall prepare a written report including the reasons the investigation was initiated, the membership interest of the person involved, a summary of the complaint, if any, the relevant facts and the staff's conclusions; and, if applicable, a~~

~~copy of any warning letter issued in accordance with subparagraph (f). The report shall become part of the investigation file which thereafter may be closed.~~

~~(e) Review of Investigation Report. The Business Conduct Committee shall promptly review each investigation report. In the event the Business Conduct Committee determines that additional investigation or evidence is needed, it shall promptly direct the Market Surveillance Department or the Examinations Department to conduct further investigation. After receipt of a completed investigation report, the Business Conduct Committee shall take one of the actions set forth in paragraph (f) or (g) of this Rule.~~

~~(f) Determination not to Initiate Charges. If the Business Conduct Committee determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it shall so instruct the Market Surveillance Department or the Examinations Department and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee. The Business Conduct Committee may also instruct the Market Surveillance Department or the Examinations Department to issue a warning letter to any person which was under investigation. A warning letter issued pursuant to this subparagraph (f) is not a disciplinary sanction or an indication that a finding of a violation has been made.~~

~~(g) Determination to Initiate Charges. If the Business Conduct Committee determines that a reasonable basis exists for finding a violation which should be adjudicated, it shall direct the Enforcement Department to prepare a Statement of Charges and shall proceed in accordance with the Disciplinary Rules.~~

(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, or other Exchange officials or upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

(b) Cooperation with Investigation or Examination. Each member, member organization, or person associated with a member shall promptly comply with any request of the Exchange's regulatory staff, including the Enforcement Department, or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

(c) Right to Counsel. A member, member organization or person associated with a member shall have the right to be represented by counsel in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.

(d) Report. Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written

report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

(e) Notice and Statement. Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report ("Subject") of the general nature of the allegations and of the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, or the Certificate of Incorporation, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

(f)(i) Determination to Initiate Charges. Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of the Exchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee.

Rule 403. Statement of Charges

(a) The Statement of Charges shall:

- (1) State the specific acts, practices or conduct in which the person (the "respondent") is alleged to have engaged;
- (2) Set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated;
- (3) State the period within which a hearing on the charge may be requested in accordance with the Disciplinary Rules;
- (4) Advise the respondent that:
 - (i) He is entitled, upon request, to a hearing on the charges;
 - (ii) Failure to request a hearing within the period prescribed in the notice shall be deemed a waiver of the right to a hearing; and
 - (iii) Failure in the answer to deny expressly a charge shall be deemed to be an admission of such charge.

(a) The Statement of Charges shall set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated, the persons or organization alleged to have committed each of the violations ("Respondents") and the specific acts which give rise to the alleged violations.

(b) A copy of the Statement of Charges shall be served upon each of the respondents in accordance with Rule 411.

Rule 404. Answer

A respondent shall have fifteen (15) business days after service of the Statement of Charges to file a written answer thereto. The Answer shall specifically admit or deny each allegation contained in the Statement of Charges, and a respondent shall be deemed to have admitted any allegation contained not specifically denied. The Answer may also contain any defense which a respondent wishes to submit and may be accompanied by documents in support of his Answer or defense. A respondent must state in his Answer whether he requests a hearing concerning the Statement of Charges. In lieu of requesting a hearing, a Respondent may request that the matter be decided upon written submissions, whereupon the Hearing Panel shall decide whether to grant such request and determine a schedule for each party to make their respective submissions. A Respondent who does not request a hearing or that the matter be decided upon written submissions, shall be deemed to have waived his right to request a hearing or have his written submissions, other than the Answer and any documents in support of his Answer or defense, be considered by a Hearing Panel (as defined in Rule 405). The Hearing Panel may thereafter prepare its decision in accordance with Rule 408. A respondent who does not so request a hearing shall be deemed to have waived his right to request a hearing and the Business Conduct Committee may thereafter prepare its decision in accordance with Rule 408. In the event a respondent fails to file an Answer within the specified time, or has not within the specified time, requested and obtained from the Business Conduct Committee an extension of time to answer, the charges shall be considered to be admitted and the Business Conduct Committee may prepare its decision in accordance with Rule 408.

Rule 405. Hearing

~~(a) Participants and Selection of Hearing Panels. A hearing on the Statement of Charges shall, at the request of respondent in his Answer, or upon motion of the Business Conduct Committee, be held before a Hearing Panel composed of three persons to be appointed by the Chairman of the Business Conduct Committee, one of whom be public and qualify as a Public Director. The presiding person of each Hearing Panel shall be a member of the Business Conduct Committee. One person on the Hearing Panel shall be a member of the Exchange, or a general partner or officer of a member organization, or such other person whom the Chairman of the Business Conduct Committee considers to be qualified. Pursuant to Commission Regulation, unless the case is related to decorum or attire, financial requirements or reporting or recordkeeping, and does not involve fraud, deceit or conversion, at least two of the three members of the Hearing Panel shall represent a membership interest. The Chairman of the Committee shall select these two other persons from those persons who shall have been designated by the Chairman of the Board of~~

Directors to serve on such hearing panels. In making such selections the Chairman shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. He shall also consider such factors as the availability of individual hearing officers, the extent of their prior service on Hearing Panels and any relationship between such persons and a respondent which might make it inappropriate for such person to serve on the Hearing Panel. Also, the Chairman shall consider if any group or class of industry participants dominates or exercises a disproportionate influence on the panel.

No person may serve on the Hearing Panel if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter under consideration. Promptly after the selection of the panelists, the Chairman of the Committee shall cause written notice thereof to be given to the accused. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chairman of the Committee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chairman of the Committee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

(b) Notice of Hearing and Pre-Hearing Procedures. The respondent shall be given at least fifteen (15) business days' notice of the time and place of the hearing. The presiding person of the Hearing Panel may schedule a pre-hearing conference to be held not less than eight (8) business days in advance of the scheduled hearing date, to be attended by a representative(s) of the Enforcement Department, each of the respondents and a member of the Hearing Panel for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such a conference, the Enforcement Department and the respondent shall furnish to the Panel and to each other copies of all books, documents or other tangible evidence in their possession or under their control which are to be relied upon in presenting or defending against the charges contained in the Statement of Charges, respectively, or which are relevant to those charges. The Enforcement Department and the respondent shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute and any other items which will serve to expedite the hearing of the matter at such a conference.

(c) Conduct of Hearing. The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing.

- (1) The formal rules of evidence shall not apply; nevertheless, the procedures for the hearing shall not be so informal as to deny a fair hearing.
- (2) A representative of the Enforcement Department shall present the charges of rule violations and the evidence in support thereof which are the subject of the hearing.

- (3) ~~The respondent shall be entitled to appear personally at the hearing.~~
 - (4) ~~The representative of the Enforcement Department and the respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.~~
 - (5) ~~The representative of the Enforcement Department and the respondent shall be entitled to call witnesses who shall testify under oath and be subject to cross-examination and questioning by the Hearing Panel and to present such evidence as may be relevant to the charges.~~
 - (6) ~~The presiding person of the Hearing Panel may, on his own motion, request the production of documentary evidence and witnesses.~~
 - (7) ~~The Exchange shall require persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.~~
 - (8) ~~If the respondent has requested a hearing, a substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed under Rule 409 or is reviewed by the Commission pursuant to Section 8c of the Act or Part 9 of the Commission's Regulations. In all other instances, a summary record of a hearing is permitted.~~
 - (9) ~~The cost of transcribing the record of the hearing shall be borne by a respondent who requests the transcript, appeals the decision pursuant to Rule 409, or whose application for Commission review of the disciplinary action has been granted under Part 9 of the Commission's Regulations. In all other instances, the cost of transcribing the record shall be borne by the Exchange.~~
- (d) ~~Recommendation of Hearing Panel. Based on its review of the entire record of the proceeding, the Hearing Panel shall submit a written report to the Business Conduct Committee containing:~~
- (1) ~~proposed findings of fact concerning the allegations in the Statement of Charges;~~
 - (2) ~~conclusions as to whether a violation within the disciplinary jurisdiction of the Exchange has been committed and an enumeration of such violations; and~~
 - (3) ~~recommendations as to appropriate sanctions.~~
- (e) ~~Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter,~~

~~impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.~~

(a) Hearing Panels.

1. Request for a Hearing—A hearing on the Statement of Charges shall, at the request of Respondent in his Answer, or upon motion of the Business Conduct Committee or Enforcement Staff, be held before a Hearing Panel composed of three persons, one of whom shall be public and qualify as a Public Director. Should the hearing be at the request of the Respondent, Exchange staff must provide written notice to the Chair of the Business Conduct Committee or the Chair's designee which requests the naming of a Hearing Panel within 5 business days of receiving Respondent's request for a hearing.
2. Selection of Hearing Panel—The Chair of the Business Conduct Committee or the Chair's designee shall name a Hearing Panel within 10 business days of (i) receipt of notice from Exchange staff that Respondent has requested a hearing; or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel, or (iii) upon Respondent's request that the matter be decided upon written submissions (as set forth in Rule 404). In selecting a Hearing Panel, consideration will be given to the composition of the Hearing Panel to insure that any group or class of industry participants does not dominate or exercise a disproportionate influence on the panel. The Chair of the Business Conduct Committee or the Chair's designee shall then promptly notify Exchange staff and Respondent of the names of the members of the Hearing Panel.
3. Hearing Panel— The responsibilities of the Hearing Panel include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Business Conduct Committee; conducting pre-hearing conferences; ruling on procedural or discovery matters; making all necessary evidentiary or other rulings; regulating the conduct of the hearing; imposing appropriate sanctions for improper conduct by a party or a party's representative; issuing decisions; and rendering decisions in connection with Summary Disposition Proceedings.

The Hearing Panelists will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel or rule upon requests to disqualify any member of the Hearing Panel..

The Hearing Panel shall be members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chair of the Business Conduct Committee or the Chair's designee considers to be qualified. The Chair of the Committee or the Chair's designee shall select these three persons from individuals who have been deemed qualified to serve as a Hearing Panelist. In making such selections the Chair or the Chair's designee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. The Chair shall also consider such factors as the availability of the individual Hearing Panelists, the extent of their prior service on Hearing Panels and any relationship between such persons and a Respondent which might make it inappropriate for such persons to serve on the Hearing Panel.

After being designated as a qualified Hearing Panelist, each prospective Hearing Panelist shall complete a mandatory training session to be conducted by the Hearing Attorney. Qualified Hearing Panelists serve for three-year terms. If a Hearing Panelist wishes to continue serving after expiration of the term, the Hearing Panelist must submit an updated application for review and approval by the Business Conduct Committee.

4. Hearing Attorney - A Hearing Attorney shall assist the Hearing Panel in the discharge of its duties. The Hearing Attorney shall not have a vote in the Panel's disposition of the matter, but will advise the Panel on the application of the Disciplinary Rules, Guidelines for Sanctions, and relevant precedent. The Hearing Attorney will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Attorney or any member of the Hearing Panel, or issue citations for violations of Exchange rules.
5. Notice—Promptly after the selection of the Hearing Panelists, the Chair of the Business Conduct Committee or the Chair's designee shall cause written notice thereof to be given to the Respondent. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such Panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chair of the Business Conduct Committee or the Chair's designee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chair of the Business Conduct Committee or the Chair's designee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.
6. Compensation of Hearing Panelists—Hearing Panelists appointed by the Chair of the Business Conduct Committee will be compensated for any hearing sessions.

including pre-hearing conferences, and for one deliberation session per disciplinary proceeding for which a Hearing Panel renders a decision. The fixed and non-negotiable rate to be paid to the Hearing Panelists shall be the same for each hearing session that lasts four hours or less and for one deliberation session. A hearing session is defined as any meeting between the parties and the Hearing Panel. If a Hearing Panelist is also a member of the Board of Directors, any Board of Directors or Standing Committee meetings that are held on the same day as the hearing would be considered a single meeting for the purposes of compensation. Hearing Panelists may be paid additional compensation in extraordinary cases, as determined by the Chair of the Business Conduct Committee in consultation with the Business Conduct Committee. Factors to be considered in determining whether a case is extraordinary include, but are not limited to, the anticipated and actual length of time of the hearing; the complexity and nature of the matter; and the magnitude of the potential penalty.

7. Hearing Panelist Availability—If a Hearing Panelist is unable to participate in the hearing for any reason, the Chair of the Business Conduct Committee shall appoint a qualified replacement Hearing Panelist for that hearing. The replacement Hearing Panelist will be selected from a pre-screened pool of qualified candidates.

(b) Notice of Hearing and Pre-Hearing Procedures.

1. Hearing Date—A hearing on the Statement of Charges shall commence no later than 120 days after the earlier of the date of filing of a written Answer by the Respondent wherein a hearing is requested or the date the Business Conduct Committee requests a hearing date. The 120 day deadline for the commencement of a hearing may be extended by the Hearing Panel for good cause.

2. Notice—The Respondent shall be given at least 15 business days notice of the time and place of the hearing.

3. Requests for Adjournments—A request by the Respondent or Exchange staff for an adjournment of the hearing date shall be in writing and will be considered by the Hearing Panel for just cause. The Hearing Panel shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the Hearing Attorney shall, at that time, schedule a new hearing date and so inform the parties of the new date.

4. Exchange of Evidence—Exchange staff and the Respondent shall furnish to the Hearing Panelists and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing on such date as prescribed by the Hearing Panel, but in any event, not less than 8 business days in advance of the scheduled hearing date.

5. Pre-Hearing Conferences—Where appropriate, the Hearing Panel shall schedule one or more pre-hearing conference(s) to be held not less than 8 business days in advance of the scheduled hearing date, to be attended by Exchange staff, each of the Respondents and the Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, Exchange staff and the Respondents shall furnish to the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing. Exchange staff and Respondents shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

(c) Conduct of Hearing. The Hearing Panelists shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Exchange staff who, along with Respondent, may present evidence and produce witnesses who shall testify under oath and shall be subject to cross examination and questioning by the Hearing Panel. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by Respondent. Exchange staff shall provide a copy of the transcript of the hearing to the Hearing Panel within 5 business days of receiving the transcript.

• • • Interpretations and Policies: -----

.01 Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

.03 Attendance. Any person not otherwise a party or licensed counsel representing a party may not attend a hearing unless specifically allowed by the Hearing Panel.

Rule 406. Summary Disciplinary Proceedings

~~(a) Initiation of Summary Disciplinary Proceeding. The Business Conduct Committee may make a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct whenever any member or member organization or person associated with or employed by a member or member organization:~~

- ~~(1) has admitted such a violation;~~
- ~~(2) there is no dispute concerning those material facts which give rise to such violation;~~
~~or~~
- ~~(3) the violation is listed in paragraph (d) of this rule.~~

~~(b) Notice to Respondent. The Exchange shall serve notice and a copy of such a summary decision upon the respondent in accordance with Rule 411. Respondent may, no later than fifteen (15) business days after service, file with the Exchange's Department of Market Surveillance a written reply to the summary decision, including documentary support, asking the Business Conduct Committee to set aside any of the findings made or sanctions imposed in the summary decision. Respondent may include a request for a hearing in its reply. If a reply is not filed within the specified time period, the summary decision shall become final and the respondent shall have waived any and all rights of review. Hearings held pursuant to this Rule shall be governed by those procedures contained in Rule 405. When a respondent has admitted or failed to deny having committed a violation, any further proceeding pursuant to the Disciplinary Rules shall be limited to the issue of the propriety of the sanction imposed.~~

~~(c) Further Proceeding. The Business Conduct Committee shall set aside a decision in a summary proceeding if a respondent establishes that an issue of material fact or law exists as to any of the findings contained or sanctions imposed in the summary decision. Should a summary decision be set aside on these grounds, a hearing will then be scheduled on the merits of the issues in dispute and the case shall proceed in accordance with Rules 405, 408 and 409. If the Business Conduct Committee decides that no issues of material fact or law exist with respect to the summary decision, the summary decision becomes final and may be appealed in accordance with Rule 409. The Exchange shall serve notice and a copy of such decision upon the respondent and the Board of Directors in accordance with Rule 411.~~

(d) ~~Summary Violations:~~

(A) ~~Floor Officials.~~ The Exchange may designate Floor Members to serve as Floor Officials. ~~Floor Officials shall resolve floor trading disputes that are not resolved among the parties and administer Floor Advices. In addition, Floor Officials may issue fines for decorum offenses.~~

(B) ~~Summary Procedure—Decorum.~~ A Floor Official may, without hearing, impose minor penalties against members for decorum offenses committed by such members or by a person or persons for whom such members are responsible. ~~Decorum offenses include the following: smoking, food and beverage, identification badges, order, visitors, dress code and security.~~

(1) Smoking

Smoking is prohibited on the trading floor and the lower level areas adjacent to the trading floor except for those areas specifically designated for smoking.

1st Occurrence	Official Warning
2nd Occurrence	\$250.00
3rd Occurrence	\$500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

(2) Food, Liquids and Beverages

Food, liquids and beverages are prohibited on the trading floor and the lower level areas adjacent to the trading floor except for the lunchrooms.

1st Occurrence	Official Warning
2nd Occurrence	\$100.00
3rd Occurrence	\$200.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

(3) Identification Badges/Access Cards

(i) ~~Identification badges must be worn chest high in full view and must accurately reflect the respective person's associations and dual affiliations.~~

1st Occurrence	Official Warning
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2nd Occurrence	\$100.00
3rd Occurrence	\$200.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

(ii) Use of another person's Identification Badge or Access Card will carry a fine of \$250.00 for the first occurrence and \$500.00 for each subsequent occurrence. The fine may be assessed against both the user and the person who allowed such use.

(4) Order

Instances determined by a Floor Official as violative of the "Order" requirement may result in fines as described below:

(i) No member or employee of a member shall conduct himself or herself in a disorderly manner on the trading floor.

1st Occurrence	\$ 50.00
2nd Occurrence	\$100.00
3rd Occurrence	\$250.00
4th Occurrence	\$500.00
5th and Thereafter	Sanction is discretionary with Business Conduct Committee

(ii) Each and every instance of abusing the paging system will carry a fine of \$1,000.00.

(iii) Firearms are prohibited on the trading floor and each and every occurrence will carry a fine of \$1,000.00.

(iv) Each act of inciting an incident of physical abuse shall carry a fine of \$250.00. Each minor act of physical abuse shall carry a fine of \$500.00. Each major act of physical abuse shall carry a fine of \$1,000.00.

In any instance where an act of physical abuse is deemed particularly egregious, or where an individual has established a pattern of Order violations, two Floor Officials may refer the matter to the Business Conduct Committee where additional fines and other sanctions may be imposed.

(5) Visitors

Non-member visitors will be permitted on the trading floor at the discretion of the Exchange. All visitors must be signed in by a member or Exchange official and

accompanied at all times by a member, associated person of a member or an Exchange official.

1st Occurrence	Official Warning
2nd Occurrence	\$ 50.00
3rd Occurrence	\$100.00
4th and Thereafter	\$200.00
5th and Thereafter	Sanction is discretionary with Business Conduct Committee

(6) Dress

All members have a choice of wearing their suit jacket or a color coded firm jacket. All clerks are required to wear a color coded clerk jacket. No hats of any type may be worn except for visors. Any type of clothing that draws excessive attention and detracts from a professional atmosphere is prohibited. All males must wear dress shirts with neckties or bowties. Neckties must be properly knotted and clip-on bowties must be connected to both sides of the collar. Blue jeans, dungarees, denim garments of any color or type regardless of style or cost, tie-dyed garments, sneakers, garments that are dirty, frayed, faded or torn are not acceptable forms of attire. APPROPRIATE running shoes or gym shoes are permitted but no sandals. This rule shall be in effect on regular business days for any floor open for trading.

1st Occurrence	Official Warning
2nd Occurrence	\$ 50.00
3rd Occurrence	\$100.00
4th and Thereafter	\$200.00
5th and Thereafter	Sanction is discretionary with Business Conduct Committee

(7) Proper Utilization of the Security System

a) Attempt to Circumvent the Security System of the Exchange

Any member or employee of a member firm who wishes to enter or exit the Exchange trading facilities must do so through the areas where the Exchange security systems are located.

1st Occurrence	\$250.00
2nd Occurrence	\$500.00

3rd and Thereafter Sanction is discretionary with
Business Conduct Committee

b) Required Filing for Floor Member Firm Employee Status Notices with the Exchange

Following the termination of, or the initiation of a change in the trading status of any employee of a member firm who has been issued an Exchange access card and trading floor badge, a completed "Status Notice" must be submitted to the Director of Regulatory Services of the Exchange as soon as possible, but no later than 9:30 am the next business day by the member firm employer. Further, every effort should be made to obtain the employee's access card and trading floor badge and to submit these to the Security Department.

1st Occurrence \$100.00

2nd Occurrence \$200.00

3rd and Thereafter Sanction is discretionary with
Business Conduct Committee

c) Required Filing for the termination of, or the initiation of a change in the status of, a business relationship between Members and their Clearing Organizations

Following the commencement or termination of a clearing arrangement between members and their clearing organization, a completed "Clearing Arrangement Notice" must be submitted to the Director of Regulatory Services of the Exchange as soon as possible, but no later than 9:30 am the next business day by such clearing organization.

1st Occurrence \$100.00

2nd Occurrence \$200.00

3rd and Thereafter Sanction is discretionary with
Business Conduct Committee

(C) Summary Procedure—Floor Advices. The Exchange may, without hearing, impose minor penalties against members for minor rule offenses committed by such members or by any person or persons for whom such members are responsible. Minor rule offenses include the following Floor Advices:

(1) Use of Identification Letters and Numbers

All Registered Commodity Traders and Floor Brokers must use the complete alpha/numeric identification assigned by the Exchange. All Floor Brokers must put their complete alpha/numeric identifiers on every ticket which they broker.

FINE SCHEDULE

1st Occurrence	\$ 50.00
2nd Occurrence	\$100.00
3rd Occurrence	\$250.00
4th Occurrence	Sanction is discretionary with Business Conduct Committee

(2) Changes or Corrections to Material Terms of a Trade

All correction sheet submissions which change material terms of a transaction (security, price, volume, series, class and customer to firm participations) must be signed by all parties to the transaction. Also, if one of the parties to the transaction is not present at a time such matter is being resolved, a signature by Surveillance staff is required to acknowledge the contra side's absence. The Surveillance signature in any such case does not relieve any party to the trade of liability in connection with the change.

FINE SCHEDULE (Implemented on a three year running calendar basis.)

1st Occurrence	\$50.00
2nd and Thereafter	\$50.00

(3) Failure to Comply with an Exchange Inquiry

Each Member, member organization or associated person is required to promptly comply with any request of information made by the Exchange in connection with any regulatory inquiry, investigation or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations.

For the purpose of this rule, information received within ten (10) business days from the date of the original request shall be deemed to meet the requirement of prompt compliance, except for purposes of Examinations Department requests, information received within two business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may under extenuating circumstances grant extensions to allow for responses beyond the allotted requirement. Requests for extensions must be submitted in writing to the appropriate department, prior to the due date of the outstanding request. Each additional request for information not furnished within the allotted time periods may be considered a separate occurrence for purposes of the fine schedule below.

~~FINE SCHEDULE (Implemented on a three year running calendar basis.)~~

1st Occurrence	\$ 200.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

~~(4) Responsibility for Assigning Participation on the Floor~~

- ~~a) In each instance where a member effects a transaction on the Exchange floor, he must make reasonable efforts to ensure that a meeting of the minds occurred with the contra side as to confirming the contra side's participation in the trade. In trades where more than one contra side is involved, each contra side must immediately make known to the largest participant his understanding as to his respective level of participation in the trade.~~
- ~~b) No such contra side who believes that he may have participated in the trade shall leave the crowd until the level of his participation in the trade has been confirmed by the largest participant.~~
- ~~c) No person in the crowd shall submit a ticket for matching on a trade when that person has or should have grounds to believe that he is not due participation in the trade.~~
- ~~d) Disputes as to participation on a trade shall be resolved by a majority vote of those persons present in the crowd during the relevant time or, if not so settled, then by a Floor Official.~~

~~FINE SCHEDULE~~

1st Occurrence	\$100.00
2nd Occurrence	\$250.00
3rd Occurrence	\$500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

~~(5) Use of Order Tickets~~

~~In accordance with CFTC Regulation 1.35 (d)(7)(ii), all order tickets must be completed in non-erasable ink. A member may correct any errors by crossing out~~

erroneous information or rewriting the order ticket provided that all essential trade information as displayed on the original order be included on the rewritten ticket.

~~FINE SCHEDULE~~

1st Occurrence	\$100.00
2nd Occurrence	\$250.00
3rd Occurrence	\$500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

~~(6) Reporting of Exchange for Physical (EFPs) Transactions:~~

~~All reports of EFPs shall be made in a form as prescribed by the Exchange. The memoranda of EFPs shall reflect the identity of the parties, representative floor brokers, clearing member organization, the time of the transaction, number of future contracts involved, their designated symbols, the equivalent cash (spot) commodity's price of the transaction and such other pertinent documentation evidencing transfer of the cash (spot) commodities component of the transaction.~~

~~FINE SCHEDULE~~

1st Occurrence	\$100.00
2nd Occurrence	\$250.00
3rd Occurrence	\$500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

~~(7) Time Stamping Requirements:~~

~~In accordance with Section 5a(b) of the Act, all order tickets must be time stamped as required by Rules 324, 325 and 326. Specifically, members must prepare a written record (order ticket) reflecting the following time stamps: time of the order execution (see Rule 324), and, except respecting orders of Registered Commodities Traders or members present on the floor, time of order receipt on the floor, time of floor broker receipt, and time of execution report. (see Rule 325).~~

~~FINE SCHEDULE~~

1st Occurrence	\$100.00
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2nd Occurrence	\$250.00
3rd Occurrence	\$500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

(a) Initiation of Summary Disposition Proceeding. A Hearing Panel may make a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct whenever:

(i) any member, or member organization or person associated with or employed by a member or member organization has admitted to such a violation; or

(ii) there is no dispute concerning those material facts which give rise to such violations.

(b) Notice to Respondent. The Exchange shall serve notice and a copy of such a summary decision upon Respondents in accordance with Rule 411. Respondents may, no later than (15) fifteen business days after service, file with the Exchange a written reply to the summary decision, including documentary support, asking the Hearing Panel to set aside any of the findings made or sanctions imposed in the summary decision. Respondents may include a request for a hearing in their reply. If a reply is not filed within the specified time period, the summary decision shall become final and the Respondents shall have waived any and all rights of review. Hearings held pursuant to this section shall be governed by those procedures contained in Rule 405. When a Respondent has admitted to committing a violation, any further proceeding pursuant to these disciplinary rules shall be limited to the issue of the propriety of the sanction imposed.

(c) Further Proceeding. The Hearing Panel shall set aside a decision in a summary proceeding if a Respondent establishes that an issue of material fact or law exists as to any of the findings contained or sanctions imposed in the summary decision. Should a summary decision be set aside on these grounds, a hearing will then be scheduled on the merits of the issues in dispute and the case shall proceed in accordance with Rules 405, 408 and 409. If the Hearing Panel decides that no issues of material fact or law exist with respect to the summary decision, the summary decision becomes final and may be appealed in accordance with Rule 409.

(d) Summary Violations.

(A) Floor Officials. The Exchange may designate Floor Members to serve as Floor Officials. Floor Officials shall resolve floor trading disputes that are not resolved among the parties and administer Floor Advices. In addition, Floor Officials may issue fines for decorum offenses.

(B) Summary Procedure --Decorum. A Floor Official may, without hearing, impose minor penalties against members for decorum offenses committed by such members or by a person or persons for whom such members are responsible. Decorum offenses include the following: smoking, food and beverage, identification badges, order, visitors, dress code and security.

Failure to Comply with an Exchange Inquiry

Each Member, member organization or associated person is required to promptly comply with any request of information made by the Exchange, or any other regulatory authority acting on behalf of the Exchange, in connection with any regulatory inquiry, investigation or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations.

For the purpose of this rule, information received within ten (10) business days from the date of the original request shall be deemed to meet the requirement of prompt compliance, except for purposes of Examinations Department requests, information received within two business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may under extenuating circumstances grant extensions to allow for responses beyond the allotted requirement. Requests for extensions must be submitted in writing to the appropriate department, prior to the due date of the outstanding request. Each additional request for information not furnished within the allotted time periods may be considered a separate occurrence for purposes of the fine schedule below.

FINE SCHEDULE (Implemented on a three year running calendar basis.)

<u>1st Occurrence</u>	<u>\$ 500.00</u>
<u>2nd Occurrence</u>	<u>\$1,000.00</u>
<u>3rd Occurrence</u>	<u>\$2,500.00</u>
<u>4th and Thereafter</u>	<u>Sanction is discretionary with Business Conduct Committee</u>

Reporting of Exchange for Physical (EFPs) Transactions:

All reports of EFPs shall be made in a form as prescribed by the Exchange. The memoranda of EFPs shall reflect the identity of the parties, clearing member organization, the time of the transaction, number of future contracts involved, their designated symbols, the equivalent cash (spot) commodity's price of the transaction and

such other pertinent documentation evidencing transfer of the cash (spot) commodities component of the transaction.

FINE SCHEDULE

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee

Rule 407. Offers of Settlement

(a) At any time during the course of any disciplinary proceeding, a respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to specified sanctions. The Business Conduct Committee may accept the offer of settlement, but may not alter its terms unless the respondent agrees. Pursuant to Commission Regulation, unless the case is related to decorum or attire, financial requirements or reporting or recordkeeping, and does not involve fraud, deceit or conversion, the Business Conduct Committee making this determination to accept or reject the offer of settlement shall be comprised of at least 50% of persons representing a membership interest other than that of the subject of the disciplinary proceeding and, if the subject of the disciplinary action is a member of the Exchange's Board of Directors or any major disciplinary committee, or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, futures contract or option on a futures contract, or to conduct which directly results in financial harm to a non member of the Exchange, at least one person who is not a member of the Exchange.

(b) The Business Conduct Committee may permit the respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based.

(c) If the Business Conduct Committee accepts an offer of settlement, it shall issue a written decision specifying the rule violations it has reason to believe were committed and any sanction to be imposed. Where applicable, the decision shall also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.

(d) The respondent may withdraw his offer of settlement at any time before final acceptance by the Business Conduct Committee. If an offer is withdrawn after submission or is rejected by the Business Conduct Committee, the matter shall proceed as if such offer had not been made and the offer and all documents relating thereto shall not become part of the record.

(e) A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as the determination of the Committee whether to accept or reject such an offer shall be final and the respondent may not seek review thereof.

At any time during a period not to exceed 120 days immediately following the date of filing of Respondent's written Answer, a Respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to specified sanctions. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision and impose sanctions consistent with the terms of such offer. Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent in accordance with Rule 411 and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as its determination whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 411.

••• Interpretation and Policies: -----

.01 If a Respondent submits an offer of settlement after the 120 day period, the Business Conduct Committee may consider such offer and determine appropriate sanctions as long as its consideration does not delay the hearing in the matter. If a Respondent submits an offer of settlement after the hearing has commenced, the Exchange staff shall promptly submit its position with respect to such offer of settlement. The Hearing Panel shall then determine whether to consider the offer of settlement and, if considered, whether to accept or reject such offer.

Rule 408. Decision

Promptly following a hearing conducted in accordance with Rule 405, the Business Conduct Committee, after a review of the entire record of the disciplinary proceeding, by a majority of the members voting, shall render a written decision based upon the preponderance of the evidence contained in the record of the proceeding. A copy of the decision shall be promptly served on the respondent in accordance with Rule 411. The decision shall include:

- (a) the notice of charges or a summary of the charges;
- (b) the answer, if any, or a summary of the answer;

- (c) a brief summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;
- (d) a statement of findings and conclusions with respect to each charge set forth in the statement of charges, including the specific rules which the respondent is found to have violated; and
- (e) a declaration of any sanction imposed and the effective date of such sanction.

Except as provided in Rule 407, the Hearing Panel shall review the entire record of the disciplinary proceeding or, if appropriate, the written submissions if the Hearing Panel granted the Respondent's request to decide the matter upon such written submissions. After this Review, the Hearing Panel, by a majority vote, shall determine whether Respondents have committed violations and the appropriate sanctions, if any, therefor. The Hearing Panel shall thereafter issue a written decision in conformity with its determination, including in its decision a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred. The decision shall be prepared, absent extraordinary circumstances, within 60 days after Exchange staff has served the Hearing Panel with a copy of the transcript of the hearing. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 411.

Rule 409. Review

(a) Petition. A respondent shall have fifteen (15) business days after service of notice and a copy of a decision made pursuant to Rules 406(c) and 408 to petition the Board of Directors for review thereof. Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which are the subject of the petition, together with the reasons that respondent petitions for review of these findings and conclusions, and whether he desires a hearing before an advisory committee of the Board thereon. Any objections to a decision not specified in the petition for review shall be thereafter waived. If the respondent does not petition the Board of Directors for review of a decision of the Business Conduct Committee within the time prescribed herein or petitions the Board and the Board takes no action for thirty (30) days after service upon it of such a decision, the decision of the Business Conduct Committee shall become a final decision of the Exchange on either of such dates, as applicable.

(b) Conduct of Review. The petition for review shall be considered by the Board of Directors, except that no director shall participate in such consideration if he participated in any prior stage of the proceeding or if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter. Also, the Board of Directors who review the matter on appeal must consist of at least one Public Director. Unless the Board of Directors shall decide for good cause shown, such review shall be based solely upon the record before the Board of Directors and the petition for review. The Chairman of the Board shall appoint an advisory committee of three directors to examine the record on appeal, one of whom shall meet the qualifications of a Public

Director, which shall give an advisory opinion thereon to the Board of Directors and before whom any hearing on review shall be conducted pursuant to Rule 409(e).

Promptly following the review proceeding and based upon such review, the Board of Directors shall issue a written decision thereon. The decision shall include a statement of findings and conclusions with respect to each charge or sanction reviewed, including the specific rules which the respondent was found to have violated by the Business Conduct Committee and a declaration of any sanction imposed and the effective date of such sanction. The Board of Directors may decide to affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modifications may include an increase or decrease of the sanction. The decision on review shall be in writing, shall be final and shall be served on the respondent in accordance with Rule 411.

(e) *Conduct of Hearing on Review.* Whenever the Board of Directors determines for good cause shown that a hearing on review is appropriate, a respondent shall be given at least ten (10) business days' notice of the time and place of the hearing. The hearing shall be held before an advisory committee of three directors, appointed by the Chairman of the Board. The appointment of such panelists shall be governed by those procedures set forth in Rule 405(a) concerning notice to the respondent and issues for fairness and impartiality and the hearing shall be conducted in accordance with the requirements set forth in Rule 405(e)(1)-(8). No director shall serve on a panel if such director participated in any prior stage of the proceeding or if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter. After the hearing takes place, the panel shall submit a written report to the Board of Directors containing its recommendations as to whether the decision of the Business Conduct Committee should be affirmed, modified or reversed. Upon receipt of this report, the Board of Directors shall thereafter proceed in accordance with Rule 409(b).

(a) *Petition by Respondent.* A Respondent shall have 10 days after service of notice and a copy of a decision made by the Hearing Panel to appeal such decision to the Board of Directors in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions in such decision, which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant to By-Law Article XI, Section 11-1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and Enforcement staff.

(b) *Conduct of Review.*

(i) The review shall be conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed to conduct the review, it shall be composed of three Board members, one of whom shall be a Public Director. Any Board member who participated in a matter before the Business Conduct Committee or Hearing Panel may not participate in any review of that matter by the Board of Directors or an Advisory Committee. Unless the Board of Directors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be conducted as soon as is practicable.

(ii) Should the Board of Directors conduct the review, then based upon such review, the Board of Directors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 411, and shall be final and conclusive subject to Rule 409(c) and (d), as well as the provisions of the Exchange Act.

(iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Directors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Directors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 411, and shall be final and conclusive subject to Rule 409(c) and (d), as well as to the provisions of the Exchange Act.

(c) Review on Motion of Board of Directors. The Board of Directors may on its own initiative order review of a Hearing Panel decision within 20 days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Directors vote to modify or reverse such decision, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the

Board of Directors may conduct such a review in accordance with the provisions of Rule 409.

(d) *Petition by Enforcement Staff.* An appeal of a decision made by the Hearing Panel may also be taken by the Enforcement staff by petitioning the Board of Directors, within 10 days after service of notice and a copy of the decision, for permission to proceed with such appeal. Such petition shall be in writing and shall specify the findings and conclusions of such decision, which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to appeal being granted. Within 15 days Respondent may submit to the Board of Directors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Directors and the Respondent.

Rule 410. Judgment and Sanctions

~~(a) Sanctions. Members, member organizations and persons associated with members or member organizations shall, subject to any Commission Regulation, be appropriately disciplined for violations under the Disciplinary Rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction.~~

~~(b) Effective Date of Sanctions. Sanctions imposed under this section shall not become effective until the Exchange review process is completed or the decision otherwise becomes final and until at least ten days after notice thereof is given to the Commission, unless such sanctions are made effective sooner as provided in the Act or Commission Regulations.~~

~~(c) Announcement of Sanctions. As soon as sanction(s) imposed under this section become effective or within five (5) days after the Exchange provides the notice required to the person against whom the action was taken, whichever occurs first, the information set forth in Rule 408(a) (e) shall be disclosed by means of a notice posted in a conspicuous place on the Exchange's premises to which the membership and the public regularly have access for a period of five (5) consecutive business days. Thereafter, a record of the information contained in such notice shall be maintained and made available for public inspection.~~

~~(d) Customer Notification of Disciplinary Actions. Pursuant to Commission Regulation 1.67, respecting a final disciplinary action finding that a member committed a rule violation that involved the execution of a transaction for a customer that resulted in financial harm to the customer, the Exchange shall promptly provide written notice of the disciplinary action to the futures commission merchant that cleared the transaction. In~~

~~addition, such futures commission merchant shall promptly provide written notice of such action to the individual or entity maintaining the account for which the transaction was executed, as such individual or entity is identified on the records of the clearing or carrying futures commission merchant, upon receipt of notice from a contract market or another futures commission merchant. Such written notice shall contain the principal facts of the case involved and shall conform to the requirements of Commission Rule 9.11(b).~~

(1) Members, member organizations and persons associated with or employed by members or member organizations shall (subject to any rules or order of the Commodity Futures Trading Commission) be appropriately disciplined for violations under these disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction.

(2) *Effective Date of Judgment.* Sanctions imposed under these disciplinary rules shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, the Hearing Panel may impose such conditions and restrictions on the activities on such Respondent which it finds to be necessary or appropriate for the protection of the investing public, members, member organizations and the Exchange and its subsidiaries.

Rule 411. Service of Notice and Extension of Time Limits

(a) Service of Notice. Any charges, notices, or other documents may be served upon a respondent either personally or by deposit in the United States mail, postage pre-paid via registered or certified mail or by courier service addressed to the respondent at his address as it appears on the books and records of the Exchange. Unless otherwise stated in this Section, all documents required to be filed with the Exchange, the Board of Directors, the Market Surveillance Department, the Examination Department, the Enforcement Department, or an Exchange committee by a respondent pursuant to this section must be received by the Exchange on or before the day prescribed.

(b) Extension of Time Limits. Any time limits imposed under this section for the submission of answers, petitions, requests for a hearing, or other materials may be extended by the Exchange body before which the matter is currently pending.

Rule 412. Fairness and Impartiality of Board or Committee Members

(a) Disqualification on Own Motion. No Board member or committee member shall in any manner participate in any disciplinary proceeding if such person cannot render a fair and impartial decision in the matter. In such case, that person shall remove himself from any consideration of the matter.

(b) Disqualification On Order of Chairman. Whenever any person has any reason to believe that a particular Board member or committee member cannot render a fair and impartial decision in a disciplinary proceeding, such person shall give prompt written notice thereof to the appropriate Chairman, specifying the grounds for contesting the qualification of such Board member or committee member. In such case, the decision of the Chairman shall be final and conclusive with respect to whether a Board member or committee member participates in the determination of such matters.

Rule 413. Surveillance

The Exchange has contracted for the performance of market and trade practice surveillance and related investigations with respect to Members and Member Organizations. The failure by any Member or Member Organization to comply with any applicable requirement, rule or procedure of or to furnish any information requested by the entity authorized by the Exchange to act on its behalf with respect to those functions shall constitute a violation of these Rules.

Rule 414 Actions against Non-Members

If the Exchange has reason to believe or suspect that any non-member is conducting trading activities in violation of the Commodity Exchange Act or Exchange rules or in a manner that threatens the integrity or liquidity of any contract, the Exchange may request such non-member and require any Members or Member Organizations to appear, produce documents and testify, or participate in a hearing to be conducted by the Business Conduct Committee.

If, after the hearing, the Business Conduct Committee determines that the actions of such non-member threaten the integrity or liquidity of any contract or threaten to violate or violate the Commodity Exchange Act or Exchange rules, the Business Conduct Committee may:

1. Order any Clearing Member to liquidate all or any portion of such non-member's position;
2. Order that no Clearing Member accept new positions on behalf of any such non-member;
3. Order such action as is necessary to prevent a threat to the contract or violation of the Commodity Exchange Act or Exchange rules.

* * * * *