

Chapter 14

Discipline

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Chapter 14

Discipline

Investigations

1400.00 Staff To Conduct. The Audits and Investigations staff of the Board of Trade (composed of non-members and reporting to the Chief Executive Officer) shall conduct a prompt and thorough investigation of any possible rule violation regardless of how such matter was called to their attention.

1401.00 Discovery Of Violations. If, during the progress of any arbitration or other investigation before any committee of the KCBT, it shall appear to such committee that any member is guilty of violating or attempting to violate these rules, such committee shall report such matters to the staff. Thereafter, such matter shall be handled as any other possible rule violation.

1402.00 Time To Commence. Normally an investigation will be commenced within four (4) weeks of receipt of information suggesting an investigation of a possible rule violation is necessary, and the investigation shall be completed as soon as reasonably possible.

1403.00 Notice To Members. Members under investigation shall be advised unless not feasible due to press of time or other factors.

1404.00 Informal Conference. Prior to the conclusion of the investigation, members under investigation shall be afforded an opportunity to present such evidence (written or oral) as they may choose.

Note: This conference will be held prior to the issuance of the staff's written report.

1405.00 Written Report. A written investigation report shall be made by the staff on conclusion of the investigation.

1406.00 Warning Letter. The staff is authorized to issue a warning letter to a member under investigation with a copy sent to the Complaint Committee, or to recommend the Complaint Committee issue such a letter.

Committee Review

1410.00 Committee. The Complaint Committee shall review all matters involving possible violations of cash rules. That Committee shall be charged with the duty to review the written reports submitted by the Audits and Investigations staff.

1411.00 Staff Report Submitted To Committee. The investigation report must be given to each member of the Complaint Committee as soon as it is prepared unless the staff clearly feels there is no evidence of a rule violation.

1412.00 Committee Convene; Time. The Complaint Committee must meet to consider the investigation report within ten (10) business days of the receipt thereof.

1413.00 Committee Decision; Time. The decision of the Complaint Committee shall be made within ten (10) business days, absent extraordinary circumstances.

1413.01 Committee Decision; Written Report. The decision of the Complaint Committee shall be made by a written report. Such report may incorporate the investigation report. The reason(s) for the decision of the Committee must be clearly stated in the written report.

1414.00 Formal Charges; Time. If the Complaint Committee determines that formal charges should be issued, the Committee shall cause the same to be prepared. The Notice of Charges shall be sent to the charged party within fifteen (15) business days of the date of the Committee decision.

1414.01 Notice Of Charges; Preparation. A written Notice of Charges shall be prepared by the staff and approved by the Complaint Committee.

1414.02 Notice Of Charges; Content. The Notice of Charges shall state:

- a. The acts, practices, or conduct in which the person is alleged to have engaged;
- b. The rule(s) alleged to have been violated (or about to be violated);
- c. The predetermined penalty, if any;
- d. That the charged person is entitled to a hearing on the charges unless waived or a written offer of settlement is submitted and ultimately accepted and approved (Rules 1416.00 through 1417.02);
- e. That the charged party may file a written answer within ten (10) business days;

- f. That the charged party may file a written "nolo contendere" plea, neither admitting nor denying guilt, but waiving all proceedings except a hearing to set any appropriate penalty;
- g. That failure to answer the charges in writing within the time prescribed in paragraph e above shall be deemed a "not guilty" plea and a hearing will be scheduled before the Business Conduct Committee;
- h. That sufficient facts to prove a rule violation must be presented at any hearing before the Business Conduct Committee in order for a penalty to be imposed; and
- i. Recommend that the charged party carefully review the rules of the KCBT and the CFTC Regulations on disciplinary matters.

1414.03 Notice Of Charges; Service On Member. The Notice of Charges shall be sent by certified mail to the most current business address known by the KCBT, or the last known residence of the charged party. Proof of mailing in such fashion shall be deemed sufficient notice.

1414.04 Notice Of Charges; Business Conduct Committee. A copy of the Notice of Charges shall be given to each member of the Business Conduct Committee.

Offers Of Settlement

1416.00 Committee Receive And Review. The Complaint Committee may receive and consider offers of settlement. The offer of settlement may include a statement that such settlement will not be deemed an admission of guilt (CFTC Regulation Section 8.16(b)). If the Complaint Committee approves and accepts the offer of settlement received, the offer of settlement must be forwarded to the Business Conduct Committee for final acceptance and approval.

1417.00 Business Conduct Committee Review. Review of a submitted offer of settlement shall be automatic and must be considered by the Business Conduct Committee within ten (10) business days of receipt from the Complaint Committee.

1417.01 Scope Of Review. The Business Conduct Committee shall have no power other than to review offers of settlement or require a full hearing on the matter if it deems the tendered offer of settlement unsatisfactory.

1417.02 Decision. The final decision of the Business Conduct Committee shall be made within fifteen (15) business days, absent extraordinary circumstances.

Note: The decision must be reduced to writing and set forth the information required by CFTC Regulation Sections 8.16(c) and 9.11(a) (1), (2), (3), and (4). A decision which approves and accepts the offer of settlement will constitute a final exchange action and must be forwarded to the CFTC.

Disciplinary Hearing

1420.00 Hearing Requirement. No member may be disciplined under these rules without being afforded an opportunity to a fair hearing at which such member can present a defense.

1421.00 Hearing Body. The hearing shall be fair and shall be conducted before the members of the Business Conduct Committee, except for the hearing provided in Rule 408.00 (decorum). The hearing may be conducted before all of the members of the Business Conduct committee or a panel thereof.

1421.01 Conflict Of Interest; Inability To Serve. No member of the Business Conduct Committee may serve on the Committee or panel if such member or any person or firm, with which such member is affiliated, has a financial, personal, or other direct interest in the matter under consideration. (In such a circumstance the Chairman of the KCBT shall appoint a substitute (Rule 244.02).

1422.00 Hearing Date. In the event a hearing is necessary, it shall be the duty of the Chairman of the Business Conduct Committee to set a hearing date within thirty (30) calendar days from the date of issuance of the Notice of Charges.

1422.01 Extension Of Time. The member charged and the Board of Trade staff are each entitled to one (1) fifteen (15) business-day extension for good cause shown. The Business Conduct Committee may, in its discretion, grant a longer extension on proof of extraordinary circumstances such as would result in a severe handicap or unfair burden to either side and therefore be unjust.

1422.02 Hearing Promptly Convened. The hearing shall be promptly convened after reasonable notice to the charged party.

1423.00 Failure To Appear. If the charged member, after due notice of the hearing as provided in these rules, shall fail to appear at the appointed time and place or shall abscond or conceal their whereabouts so that notice pursuant to Rule 1414.03 cannot be made, the hearing may proceed in the absence of such party and the determination of the Business Conduct Committee shall be binding as in other cases.

1424.00 Staff A Party. The staff shall be a party to the hearing before the Business Conduct Committee and shall present the case on those charges and penalties which are the subject of the hearing.

1425.00 Rights Of Charged Party; Prehearing. Prior to the commencement of the disciplinary hearing required by this Chapter, the charged party shall be afforded the following:

- a. **Right To Representation.** Upon being served with a Notice of Charges, a charged member has the right to be represented by legal counsel or any other representative chosen by such member (such as an accountant or another member) in all succeeding stages of the disciplinary proceeding; and
- b. **Discovery.** The charged party shall be entitled in advance of the hearing to examine all books, documents, or other tangible evidence in the possession of or under the control of the KCBT which are to be relied upon by the staff in presenting the charges contained in the Notice of Charges or which are relevant to those charges.

1426.00 Rights Of Charged Party; Hearing. The charged party shall be afforded the following rights at any hearing required by this Chapter:

- a. **Appear Personally.** The charged party shall be entitled to appear personally at the hearing;
- b. **Call Witnesses.** The charged party shall be entitled to call witnesses and to present such evidence as may be relevant to the charges; and
- c. **Cross-Examination.** The charged party shall be entitled to cross-examine any person appearing as a witness at the hearing.

1427.00 Hearing; Requirements. The following requirements shall apply to any hearing required by this Chapter:

- a. **Rules Of Evidence.** The formal rules of evidence need not apply; however, the hearing procedures may not be so informal as to deny a fair hearing;
- b. **Record Of Proceeding.** A substantially verbatim record of any hearing shall be made and become a part 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 the CFTC or the charged party, if the decision is appealed under CFTC Regulation Section 8.19, if the decision is reviewed by the CFTC pursuant to Section 8c of the Commodity Exchange Act, as amended, or appealed as permitted by these rules;
- c. **No Self-Incrimination.** No witness shall be compelled to answer any question which might tend to incriminate such member; and
- d. **Irrelevant Material.** Testimony which in the opinion of the Committee or tribunal is irrelevant to the case on hearing shall not be admitted.

1427.01 Hearing; Disorderly Conduct. The use of any personal, abusive, or discourteous language or other conduct which impedes the progress of any hearing pursuant to this Chapter shall subject the party offending to censure, a fine of not exceeding \$100.00, or both. The penalty shall be imposed by the Committee Chairman at the time of the offense.

1428.00 Witnesses; KCBT Efforts. The KCBT shall require persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. Reasonable efforts shall be made by the KCBT to secure the presence of all other persons called as witnesses whose testimony would be relevant.

1428.01 Persons Within The Jurisdiction Of The KCBT; Defined. Persons within the jurisdiction of the KCBT shall include all members, firms represented by membership to the extent such firms are involved in transactions governed by the rules of the KCBT, floor clerks, Board of Trade staff, and Clearing Corporation staff.

1429.00 Hearing; Testimony. The Business Conduct Committee shall at all hearings take testimony under oath, and no statement not sworn to shall be considered in the determination of the case.

1430.00 Hearing; Witnesses. In any hearing before the Business Conduct Committee, if any member who shall have had notice, in writing, from the Secretary to appear and testify in the case, or if any member who shall have been cited by the Chairman of the Business Conduct Committee to appear and testify, shall neglect or refuse to answer any question which may, by a majority vote of the said Business Conduct Committee, be declared proper and pertinent to the case in hearing, such member shall be subject to suspension by such Committee from all the privileges of the KCBT for such period as that Committee may determine. The Business Conduct Committee may suspend a member in case of contempt of a witness before said Committee, provided that in case of such contempt before the Business Conduct Committee, the penalties herein provided may be inflicted at once and without notice.

1431.00 Hearing; Order of Presentation. When members are required to appear at a hearing before the Business Conduct Committee for the purpose of discipline, normally each party to such hearing shall be allowed to address the Business Conduct Committee once in opening the case, stating the line of prosecution and defense only; thereafter both sides shall present evidence, the staff first, then the charged party, subject to the right of cross-examination. At the conclusion of such hearing, the staff shall be allowed to address the Business Conduct Committee in opening and closing the argument, and the defense shall be allowed equal time after the opening and before the closing arguments by the prosecution. The closing argument of the staff shall, however, be confined to a summation and any new matters presented in the closing argument of the defense. Before the beginning of the argument the Committee Chairman shall designate the time to be allowed to each party.

1432.00 Business Conduct Committee Decision. Promptly following a hearing conducted in accordance with these rules, the Business Conduct Committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding. A copy of the decision shall be provided the charged party.

1432.01 Time. Normally a decision should be made in a closed executive session, drafted, edited, revised, signed, and given to the charged member within three (3) weeks [fifteen (15) business days] following the conclusion of the hearing.

1432.02 Consider Rule 1441.00. The Business Conduct Committee shall, in considering a case, take into account the guidelines of Rule 1441.00.

1432.03 Penalties. Subject to appeals as provided by the rules and applicable laws, any member who shall be found guilty of any violation of any of the provisions of the Certificate of Incorporation, the rules, resolutions, or any regulations adopted by the Board of Directors, shall be subject to being warned, censured, fined, suspended, expelled, or membership and property rights forfeited, at the discretion of the Business Conduct Committee, after a full and fair hearing of all the facts presented in the case.

1432.04 Written Decision. The written 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 to the investigation report;
- d. A statement of findings and conclusions with respect to each charge, including the specific rules which the charged member is found to have violated; and

e. A declaration of any penalty imposed and the effective date of such penalty.

1432.05† Failure To Comply. Failure of the Charged Party to comply with the terms of any penalty imposed by the Business Conduct Committee or the Board of Directors within the time provided shall result in warning, censure, fine, suspension, expulsion or forfeiture of membership and property rights at the sole discretion of the Board of Directors.

Note: Approved by Board of Director's action August 26, 1986, see page 1093 of Board Minutes.

1432.06† Procedure For Imposition Of Penalty For Failure To Comply. The failure of a Charged Party to comply with the terms of any penalty imposed by the Business Conduct Committee or the Board of Directors within the time provided shall be considered by the Board of Directors for possible imposition of sanctions. The Charged Party shall be given ten (10) days written notice in advance of the meeting of the Board of Directors by certified mail to the most current business address known by the KCBT or the last known residence of the Charged Party. Proof of mailing in such fashion shall be deemed sufficient notice.

Note: Approved by Board of Director's action August 26, 1986, see page 1093 of Board minutes.

1433.00 Hearing Reopened. The Business Conduct Committee may order the hearing reopened to receive newly discovered material evidence prior to issuing a written decision on the written request of the staff or the charged party.

Appeal

1435.00 Appeal; Generally. An appeal, except as provided in Rule 232.05, may be taken to the Board of Directors from a decision of the Business Conduct Committee within ten (10) business days from the date the decision is released.

1436.00 Appeal; Content. An appeal to the Board of Directors must be in writing and contain the following:

- a. Name of the charged party;
- b. Nature of the objection to the decision; and
- c. Argument and discussion.

1437.00 Appeal Hearing; Time. The Board of Directors shall convene as an appeal body to hear the appeal within twenty (20) business days. At least ten (10) business days advance written notice of the hearing day must be sent to both parties (see note 1).

1437.01 Continuance. On written application, for a good cause shown such as a delay in obtaining a typed copy of the transcript, unavailability of counsel, etc., the Business Conduct Committee Chairman may grant each party one (1) continuance not to exceed thirty (30) calendar days.

1438.00 Appeal Board. The appeal or review proceeding may be conducted before all of the members of the Board of Directors or a panel of five (5) Directors appointed by the Chairman for such matter.

1438.01 Conflict of Interest; Inability To Serve. No member of the Board of Directors shall serve on an appeal or a review body or panel thereof if such member participated in any prior stage of the disciplinary proceeding or if such member or any person or firm, with which such member is affiliated, has a financial personal, or other direct interest in the matter.

1439.00 Scope Of Review On Appeal. Except for good cause shown, the appeal shall be based on the record of the hearing before the Business Conduct Committee, including documentary evidence and the transcript, and oral and written positions of the parties. The Board of Directors shall determine if the decision was based on the weight of the evidence (CFTC Regulation Section 8.18) and if the sanction imposed was appropriate. The Board of Directors, or a panel thereof, shall have the power to affirm the decision of the Business Conduct Committee, reduce the sanction or remand the matter to the Business Conduct Committee for rehearing.

1440.00 Hearing; Procedure. The procedure before the Board of Directors, or panel thereof, sitting as an appeal body shall be generally as follows:

- a. The Chairman shall preside;
- b. The First Vice Chairman may not participate in or be present at the proceedings;
- c. The appealing party shall ordinarily have twenty-five (25) minutes to present its case (not counting question time);
- d. The staff shall have ordinarily thirty (30) minutes (not counting question time);
- e. The appealing party shall have a five-minute period for rebuttal and summation;
- f. The Directors may ask questions, although generally they should wait until the end of a presentation to do so.

Note: The rights guaranteed by Rules 1425.00, 1426.00, and 1427.00 shall also apply at any appeal hearing.

1441.00 Considerations In Review Of Sanctions On appeal. In reviewing the sanction, the Board of Directors, or panel thereof, shall consider, among other factors:

- a. Nature and extent of injury or damages, if any, suffered as a result of the rule violation, and remuneration, if any, to the injured party;
- b. Past record of the charged party;
- c. Financial position of the charged party;
- d. Deterrent effect of the sanction; and
- e. Other relevant factors.

1442.00 Appeal Decision. The Board of Directors or a panel thereof, shall issue a written decision within thirty (30) calendar days of the hearing. That decision shall be the final decision of the KCBT and shall be effective ten (10) business days after delivery thereof to the CFTC.

1442.01 Copy To Charged Party. A copy of the written decision of the Board of Directors, or a panel thereof, shall be mailed to the charged party, return receipt requested, at the last known address of the charged party.

1442.02 Contents Of Decision. The written decision shall include:

- a. A statement of findings and conclusions with respect to each charge or penalty reviewed;
- b. The specific rules which the charged party was found to have violated by the Business Conduct Committee;
- c. A declaration of any penalty imposed; and
- d. The effective date of such penalty.

Summary Actions

1445.00 Summary Action; When Necessary. Summary actions may be taken upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace.

1446.00 Notice Of Summary Action. The charged party shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the charged party shall be served with a notice at the earliest possible opportunity. The notice shall state:

- a. The action taken;
- b. Briefly the reasons for the action; and
- c. The effective time, date, and the duration of the action.

1447.00 Right To Representation. The charged party shall have the right to be represented by legal counsel or any other representative of such person's choice in all proceedings subsequent to notice of the summary action taken pursuant to Rule 1446.00.

1448.00 Hearing. The charged party shall promptly be given opportunity for a hearing subsequent to the summary action. The hearing shall be fair and shall be held before one or more members authorized by the KCBT to conduct hearings pursuant to Rule 1421.00 (Business Conduct Committee). The hearing shall be conducted in accordance with the requirements set forth in this Chapter.

1449.00 Decision. Promptly following the hearing provided for in Rule 1448.00, the Business Conduct Committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the charged party. The decision shall set forth:

- a. A description of the summary action taken;
- b. The reason(s) for the summary action;
- c. A brief summary of the evidence produced at the hearing;
- d. Findings and conclusions;
- e. A determination that the summary action should be affirmed, modified, or reversed;
- f. A declaration of any action to be taken pursuant to the determination specified in paragraph e. above; and
- g. The effective date and duration of such action.

1450.00 Appeal To Board Of Directors. The charged party may appeal promptly an adverse decision of the Business Conduct Committee. Such appeal shall be established in accordance with the requirements for an appeal in all other disciplinary matters.

Sanctions; Effective Date

1455.00 Effective Date. The effective date for any sanction imposed by the Business Conduct Committee or of any decision of the Board of Directors, or a panel thereof, on an appeal, except as otherwise provided, shall be ten (10) business days following the delivery of the written decision to the CFTC, a copy having been mailed, return receipt requested, to the charged party at such party's last known address. The decision shall be final on such date, subject to the exceptions listed in Rule 1455.01.

1455.01 Exceptions. The effective date of sanctions as set forth by Rule 1455.00 shall not apply:

- a. Where there is reasonable belief that immediate action is necessary to protect the best interest of the market;
- b. Where the actions of a person within the jurisdiction of the KCBT impede the progress of a disciplinary hearing (see Rule 1427.01);
- c. Where a person has failed to timely submit accurate records required for clearing or to verify each day's transactions or other similar activities (see CFTC Regulation Section 8.27); or
- d. Where the person against whom the action is taken has consented to the sanction to be imposed.

1455.02 Notice Requirements. If the KCBT determines in accordance with these rules that the disciplinary action shall become effective prior to the expiration of ten (10) business days after written notice thereof, it shall by telegram or other means of written telecommunication immediately notify the Commission (CFTC) and the person against whom the action is taken, stating the reason(s) for that determination.

Note: CFTC Regulations require the KCBT to give the public notice of disciplinary actions taken by the KCBT. The regulations specify the information that must be publicly disclosed.

1456.00 Notice Required For All Sanctions. Written notice of all disciplinary actions under these rules shall include:

- a. The name of the person against whom disciplinary action was taken;
- b. A statement of the reason(s) for the KCBT action together with a listing of any rule(s) which the person who was the subject of the disciplinary action was charged with having violated or which otherwise serve as the basis of the KCBT action;
- c. A statement of the conclusions and findings made by the KCBT with regard to each rule violation charged; or, in the event of an approved and accepted offer of settlement, a statement specifying those rule violations which the KCBT has reason to believe were committed; and
- d. The terms of the disciplinary action.

1457.00 Stay Of Sanction. If a written appeal to the Board of Directors, or a panel thereof, is filed with the Secretary within ten (10) business days following the release of the decision of the Business Conduct Committee which contains a request that the sanction be delayed pending the appeal, the Chairman may order such delay. The decision shall not be final until the appeal decision is rendered, or, if the appeal is withdrawn, ten (10) business days after notice has been given pursuant to Rule 1455.00.

1458.00 Bar To Further Discipline. When any member shall have been relieved from suspension or expulsion, in the manner provided by these rules and after due notice of such member's application has been given, such relief shall be a bar to any further discipline on account of any debts incurred prior to such relief; provided that said debts shall have been due and payable at the time of such relief.

Costs

1460.00 Costs Of Transcript. The costs of transcribing the record of any hearing shall be borne by a charged party requesting the transcript, the party appealing the decision pursuant to CFTC Regulation Section 8.19, or the party whose application for Commission review of the disciplinary action has been granted.

1461.00 CFTC Review Or Appeal. Upon request, in event of appeal to the CFTC (or review by the CFTC), the KCBT will provide the information required by CFTC Regulation Section 9.11(c) within thirty (30) days and notify the person who is the subject of the disciplinary action. A person subject to the disciplinary action requesting a copy of the information furnished the CFTC, as provided in this rule and CFTC Regulation Section 9.11(c), shall pay the KCBT reasonable fees for the reproduction of the copy.

Resolutions

RES 14-1400.00-1 Discipline; Staff To Conduct Investigation

Authority Of Audits And Investigations Staff; Confidentiality

RESOLVED, that during the course of any investigation or review conducted by the Audits and Investigations staff, the Audits and Investigations staff is authorized and empowered to review and , as necessary, copy any and all books, records, papers, reports, memoranda, financial data, customer data, or any other information or documents in the possession of any person, firm, partnership, or corporation within the jurisdiction of the Exchange which may have a bearing on the matter(s) under investigation or review. All such books, records, papers, etc., reviewed shall be maintained in strict confidence, except that relevant information so obtained may be disclosed only as necessary to the Complaint Committee, the Cash Grain Adjustment Committee, the Compliance Advisory Committee, the Business Conduct Committee, and the Board of Directors in connection with matters pending before such bodies (December 30, 1980).

RES 14-1410.00-1 Discipline; Committee

Conflict Of Interest; Complaint Committee

RESOLVED, that whenever the Complaint Committee is convened for the purpose of reviewing matters involving possible rule violations, no member of such Committee may serve in the matter if such member or any person or firm, with which such member is affiliated, has a financial, personal, or other direct interest in the matter before the Committee. If a member is unable to serve, an alternate shall be selected by the Chairman of the Complaint Committee; provided, however, if all members of the Committee are disqualified, the KBCT Chairman shall appoint substitutes as necessary to constitute a quorum and to serve only as to the matter under consideration (December 30, 1980).