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Chapter 16

MEMBER TO MEMBER FUTURES ARBITRATION

Disputes Subject To Arbitration

1600.00 Settlement Of Member Disputes. This chapter sets forth the procedure for settlement of claims, grievances, or disputes involving futures contract transactions between Board of Trade members only, and which do not involve customers.

1601.00 Claim, Grievance or Dispute; Defined. The term "claim or grievance" shall mean any dispute which arises out of any transaction on or subject to the rules of this contract market, executed by or effected through a member of this contract market or employee thereof, which dispute does not require for adjudication the presence of essential witnesses or third parties over whom this contract market does not have jurisdiction and who are not otherwise available. The term "claim or grievance" does not include disputes arising from cash market transactions which are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery.

1602.00 Member; Defined. The term "member" is used in this Chapter to mean individuals who hold memberships on the Board of Trade in their own individual names, and/or firms represented by members (sometimes called "member firms").

1603.00 Members Must Arbitrate. Any member who shall commence any legal action against another member (unless by agreement) for any dispute arbitratable under this Chapter before first attempting to arbitrate, shall be subject to disciplinary action pursuant to Chapter 14. If arbitration has been attempted and rejected, then a legal action may be commenced and the member failing or refusing to arbitrate may be disciplined pursuant to Chapter 14.

1604.00 Procedure. Only the rules and procedures of this Chapter 16 shall govern member to member disputes involving futures contract transactions and shall be independent of customer claims or grievances submitted for resolution under Chapter 15 and member claims against other members arising from cash market transactions under Chapter 31.

Hearing Body

1605.00 Arbitration Committee.

- (a) **Hearing.** It shall be the duty of the Arbitration Committee to hear and determine all disputes described in Rule 1601.00.
- (b) **Panel.** The parties to the arbitration case shall, if utilizing the regular Arbitration Committee, mutually select five (5) members to serve as the hearing panel for that case from the ten (10) elected Arbitration Committee Members. Should the parties be unable to reach agreement, the five (5) member hearing panel shall be determined by each party alternatively striking one (1) name until five (5) are left. The first strike

shall be determined by a toss of a coin.

Note: Amended by membership vote August 18, 1981.

1606.00 Disqualification To Serve. Members of the Arbitration Committee shall be disqualified to serve as a member of such Committee on the hearing of any case whenever it shall appear by the statement of such member or by the statement under oath of either party to the hearing, that such member is interested or prejudiced, is an associate, is related to either party, or that the opposite party has an undue influence over the mind of such member.

1607.00 Sworn Statement Of Party; Time. The party filing a statement under oath pursuant to Rule 1606.00 must do so not later than three (3) business days prior to the date set for hearing.

1608.00 Substitute. In the event of disqualification, and if the interested parties are unable to agree on the substitute, each party shall submit to the other three (3) names of disinterested members (those persons who have no interest in the dispute) from which each shall strike two (2) names and submit the remaining two (2) names (one from each list) to the Secretary. From the names submitted, the Secretary shall select the member to act as a substitute. All such proceedings must be had so as not to delay the hearing.

1609.00 Special Committee. When the Arbitration Committee cannot be formed due to absence, disqualification, or unwillingness of regular members to serve, the parties shall be allowed to fill vacancies with any member(s) willing to serve (not being members of the Board of Directors) on whom they may agree. If such parties are unwilling to submit their case to the Arbitration Committee, they may choose three (3) or more members (willing to serve and not being on the Board of Directors) on whom they may agree. Such agreement, in either case, shall be communicated to the Secretary in writing and signed by all the parties in the controversy.

Note: Any Special Committee agreed upon under this rule shall adhere to all requirements and duties of a hearing body as set forth in this Chapter.

1610.00 Award Of Special Committee Binding. An award or finding of any committee formed pursuant to Rule 1609.00 shall be binding as if made by the regular Arbitration Committee.

Duties Of Hearing Body

1611.00 Duties Of Arbitration Committee. The Committee shall render a just and equitable award based on the evidence, the law, the Certificate of Incorporation, the rules and regulations of the KCBT, and trade practice to the best of its ability.

1612.00 Nonliability. The Committee members and the KCBT shall not be held liable for any errors of judgment in any respect whatsoever, or for any damages done or loss suffered by reason of their acts.

1613.00 Duty To Attend. Members of the Arbitration Committee who fail to appear when their services are required shall be in default and shall be fined Twenty-Five and No/100 Dollars (\$25.00) for each default by the Board of Directors for the use of the KCBT, unless a satisfactory written excuse is presented to the Board within five (5) business days of said default.

Complaint

1614.00 Written Sworn Complaint. Any member desiring to submit a matter in dispute as defined in Rule 1601.00 to the Arbitration Committee for resolution, shall file a sworn written complaint with the Secretary of the KCBT, alleging the nature of the dispute, the basic facts, the damages sought and the name of the Defendant.

1614.01 Time. The sworn written complaint must be filed with the Secretary within one (1) year after the date of the transaction from which the dispute arose.

1615.00 Mandatory Joinder. Any Claimant having claims growing out of or connected with the same transaction against more than one (1) member shall be required to join all of said members as Defendants. On failing to do so, the Claimant shall be barred and stopped from making any claim or demand against any member not so made a Defendant. The same rule shall apply to counterclaims.

1616.00 Service On Defendant. A copy of the complaint shall be served by the Secretary on the Defendant.

Answer

1617.00 Failure By Defendant To Answer. If the Defendant fails to answer the complaint in writing within ten (10) calendar days after service of copy, or if the Defendant refuses to sign the Articles of Agreement prescribed in Rule 1618.00, the Defendant shall be deemed to have refused to arbitrate and to have incurred the possibility of disciplinary action by the Business Conduct Committee as discussed in Chapter 2 for such non-action, including the possibility that the Committee may order an award for the Claimant.

Agreement To Arbitrate

1618.00 Agreement. Within ten (10) calendar days from the date the sworn written complaint is served on the Defendant as set forth in Rule 1616.00, the parties to the arbitration shall sign the Articles of Agreement in a form to be furnished by the Secretary.

1618.01 Execution By Member. Any member or any officer of a member firm may execute the Articles of Agreement on behalf of such firm or corporation.

Counterclaim

1619.00 When Presented. Any Defendant shall have the right to present any counterclaim of the character described in Rule 1601.00 against the Claimant.

Hearing

1620.00 Time Of Hearing. The time and place of the arbitration hearing shall be determined by the Chairman of the Arbitration Committee or Special Committee, and the Secretary shall give due notice to all parties involved. Reasonable effort shall be made to accommodate the parties.

1621.00 Postponements. Unless for good cause shown satisfactory to the Committee hearing the dispute, neither party shall postpone the hearing of a dispute longer than twenty-one (21) calendar days after the sworn written complaint has been filed with the Secretary.

1622.00 Location. Arbitration proceedings conducted under this Chapter must be held in the executive office of the KCBT, located at 4800 Main in Kansas City, Missouri, unless otherwise agreed to by the parties and the Arbitration Committee.

1623.00 Representation By Counsel. The parties to any arbitration proceeding under this Chapter shall have the right to be represented by counsel, at his or her own expense during any aspect of the procedure.

1624.00 Citations To Witnesses. The Arbitration Committee has the power to issue citations to witnesses on the written request of the parties, or on its own. Members served with a citation to be a witness must appear to testify and bring such documents as required by the citation, at the time and place identified.

Note: Refusal to appear, to testify, or produce documents may subject such person to disciplinary actions under Chapter 33.

1625.00 Rule Of Construction. At all such adjudications, the Committee shall construe all the provisions of the law, the Certificate of Incorporation, the rules and all the regulations of the KCBT as being designed to secure justice and equity in trade, and all awards or findings shall be made in conformity therewith.

1626.00 Determining Value. In determining the true market value of property, its value in other markets, or its value for manufacturing purposes in this market, together with such other facts as may justly enter into the determination of its true value, shall be considered, in addition to prices it may be selling for in this market. In case of default on contracts for future delivery, the defaulting party may be required to pay, in addition to the actual damage or loss, as a penalty for such default, an amount not exceeding ten percent (10%) of the value of the property as determined under the provisions of this rule.

Note: See Chapter 30 regarding defaults.

1627.00 Oath Of Arbitration. Before commencing the hearing of a case, the members of the Arbitration Committee shall take and subscribe to the following oath or affirmation, vis-a-vis:

I do solemnly swear (or affirm) that I will faithfully and fairly hear and examine all matters in dispute to be submitted in this proceeding and that I will make a just and equitable award or finding upon the same, in conformity with the Certificate of Incorporation, rules and regulations of the Board of Trade, and according to the evidence to the best of my understanding and ability, so help me God.

1628.00 Evidence. All evidence before the Arbitration or Special Committee shall be taken orally under oath or affirmation.

1629.00 Record Of Proceedings. All testimony and the proceedings of the hearing shall be recorded by a stenographer and transcribed. The original transcript shall be filed with the Secretary and retained with the record in each case. Copies of the transcript shall, upon request, be furnished to each party to the proceeding. The cost of such record shall be assessed by the Committee.

1630.00 Role of Chairman. The members of the Arbitration Committee or Special Committee shall elect a Chairman. Such Chairman shall perform the following functions:

- a. Set the time and date for the hearing in consultation with the other hearing body members and the parties;
- b. Convene and conduct the hearing in an orderly fashion following the procedural guidelines set forth in Rule 1632.00 to the extent practicable;
- c. Consult with the hearing body to determine procedural matters, which may be done in private (such as whether or not challenged evidence is to be admitted into evidence), and then to announce the decision to the parties;
- d. Assign the drafting of the award; and
- e. Sign the final award.

1631.00 Role Of Hearing Clerk. The Secretary or some other member or person may serve as Hearing Clerk. The Clerk will make sure the room is in order; arrange for the recording of the hearing; receive and send all official notices, citations, etc.; administer oaths to members and to witnesses; mark evidence; retain the evidence and official record; call witnesses; and otherwise serve to facilitate the hearing. The Clerk may confer with the Committee on its request; and when asked, provide non-binding legal or procedural opinions; and if so instructed, may prepare a draft of an award. The Clerk may not express an opinion on the factual issues.

1632.00 Procedural Guidelines. The intent of this rule is for the hearing to be conducted in a fair, businesslike manner using the following procedure as a guide:

- a. Formal call of the case to order by the Chairman;
- b. Oath of Committee members administered by Hearing Clerk;
- c. Introduction, identification of parties, Committee members, witnesses, Clerk, etc.;
- d. Administration of oath to witnesses;
- e. Claimant's opening statement;
- f. Defendant's opening statement;

Explanation of (e) and (f): Opening statements are optional, and should consist of a very brief description of the principal issue(s) in dispute, what the parties intend to prove, and to inform the Committee as to the nature of the case. Opening statements may consist of a reading of the complaint and/or answer. They are not evidence of facts alleged therein.

- g. Presentation of written stipulation of nondisputed facts, signed by both parties and prepared prior to the hearing;

Explanation: This is optional and may be used to shorten the hearing since all facts not stipulated must be proved at the hearing. If no facts are in dispute the parties may elect not to have a hearing and make a written presentation.

- h. Presentation of Claimant's evidence;

- i. Presentation of Defendant's evidence;

Explanation of (h) and (i): Factual allegations in dispute must be proven by oral testimony of witnesses and/or by documentary evidence. Each party may question the other's witnesses (including the other party if a witness) after initial testimony and may examine documentary evidence before it is offered into evidence. Normally all evidence is admitted in an arbitration proceeding for whatever value it may have, even if slight. However, matters clearly not relevant may be excluded if challenged. Parties testifying in their own behalf should only present facts at this point, and not argue the case. Arguments are presented later.

- j. Rebuttal (if any) by Claimant;

- k. Rebuttal (if any) by Defendant;

Explanation of (j) and (k): Rebuttal is an attempt to refute facts presented by the other party by further documents or witnesses.

- l. Claimant announces case closed;

- m. Defendant announces case closed;

Explanation of (l) and (m): Usually at this point a brief recess is in order to permit the parties time to organize final arguments.

- n. Claimant's final argument;

- o. Defendant's final argument;

- p. Claimant's rebuttal argument;

Explanation of (n), (o), and (p): Any or all of these (final argument and/or rebuttal argument) may not be given if the party so chooses. By permission of the Committee, final arguments may be made in writing and submitted later.

- q. Formal hearing adjourned by Chairman.

Explanation: The Committee may announce its decision at the conclusion of the hearing or it may await private deliberations and/or reading of the transcript, prior to announcing the decision.

AWARD

1633.00 Arbitration Award; In Writing. The Arbitration Committee shall render its award in writing, through the Secretary of the KCBT within five (5) business days after its decision is made. Such award shall be signed by the Chairman and the other members of the Committee and shall be certified by the Secretary of the KCBT under the seal of the Board of Trade.

1633.01 Contents Of Award. The written award should:

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- a. Identify the parties;
- b. State the controlling issue(s) in dispute;
- c. Announce the name of the prevailing party;
- d. State the reason(s) for the decision, including the relevant facts; and
- e. State the monetary award, if any, to be paid, by and to whom, and direct the payment of costs.

The decision should be clear and concise, yet contain enough information to permit a stranger to the case to understand the facts, dispute, decision, and reasoning.

1633.02 Record Of Awards. The Secretary shall keep a record of the cases submitted for adjudication of the Arbitration Committee and the disposition of the same. The Secretary shall collect all awards and pay them over to the appropriate parties and enter the same in the record of the case; or receive written acknowledgment of the receipt of all awards from the parties so entitled, and record the same in the record of the case.

1633.03 Inspection. The official record and decisions of the Committees and all other records of the case, may be inspected by any member who is a party to the case upon written application to the Secretary; except that either party or any witness may request confidential treatment of trade secrets, customers, etc., at the time such is introduced.

Note: The current rules state that any member may inspect the records which means the Secretary would be required to allow any member, not a party to the dispute, to inspect the official records.

FEES

1634.00 Filing Fee. The Secretary's office shall receive a non-refundable filing fee of \$50.00 for each complaint filed.

1635.00 Fees For Arbitration. The hearing fees for arbitration under the provisions of this Chapter shall be for the benefit of the individual members of the Committee and shall be as follows:

<u>Amount of Controversy</u>	<u>Fee Per Sitting</u>
\$2,500.00 or less	\$100.00 (\$20.00 per member)
\$2,501.00 to \$10,000.00	\$200.00 (\$40.00 per member)
Over \$10,000.00	\$600.00 (\$120.00 per member)

1636.00 Paid In Advance. The fees shall be paid in advance to the Secretary by the party bringing the case, except for the additional sitting fee which must be paid prior to the issuance of the award.

1637.00 Additional Sitting Fee. In all cases brought before the Arbitration Committee where the evidence is of such volume that it cannot be presented or heard in one (1) sitting, the Arbitration Committee shall have the power to adjourn the hearing from time to time and to charge, in its discretion, \$50.00 extra for each additional sitting of not less than three (3) hours.

1638.00 Failure To Appear. If either of the parties to the dispute fails to appear at the hearing, or requests a postponement, the parties may (if the case is postponed) be assessed with costs, by and for the use of the Committee, in any sum, in the Committee's discretion, not exceeding Fifty Dollars (\$50.00). However, the Committee may insist that the hearing take place without postponement.

1639.00 Who Pays Fees. Fees, and all additional costs that may be incurred during the investigation of suits, shall be finally paid by the party as is decided by the Committee hearing the same, and shall be included in the Committee's award or finding.