

Chapter 15

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Chapter 15

Customer Arbitration

Note: FCM responsibilities, CFTC regulations. Customer arbitration procedures are subject to CFTC regulations, which place certain duties on both contract markets and FCMs. It is presumed that Board of Trade members will follow CFTC requirements, such as notice to customers, providing multiple forums, etc. (See CFTC Reg. §180). These customer arbitration procedures were amended and printed in August, 1990, to conform to CFTC Regulation §180.

Disputes Subject To Arbitration

1500.00 Customer Claims And Grievances. All customer(s) claims and grievances against members or employees thereof, may be heard for settlement through arbitration, in accordance with fair, equitable, objective, and impartial procedures as set forth in this Chapter.

1500.01 Claim Or Grievance; 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.

1500.02 Customer; Defined. The term "customer" shall mean any person, for whom or on behalf of whom a member affects a futures or option transaction on the Board of Trade, having a dispute, claim, or grievance involving a futures or options contract transaction against a member of the KCBT or employee of such member; provided however, that such term does not include members of the KCBT.

1500.03 Member; Defined. Whenever the word "member" is used in this Chapter, it shall be deemed to mean individuals who hold memberships in their own names, and/or firms represented by members (sometimes called "member firms").

Hearing Body

1503.00 Arbitration Committee Or Special Committee.

- a. **Customer Election.** Customers submitting a matter in dispute for arbitration under these rules may either elect to have their claim or grievance heard by the regularly constituted Arbitration Committee of the KCBT; or, heard by a specially constituted panel having at least a majority of the persons serving thereon who are not members, not associated with any member of any contract market, nor employees thereof, and who are not otherwise associated with any contract market. (But see Rule 1503.03, Single Arbitrator).

- b. **Panel.** The parties to an 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 trike being determined by a toss of a coin.

1503.01 Notice Of Election To Customer. On receipt by the KCBT of a customer request to arbitrate a dispute with a member, the customer shall be advised by written notice of the right to elect to have the controversy decided by the regular Arbitration Committee of the KCBT, or to request a special panel having a majority who are not members, not associated with any member, nor employees of any contract market, and who are not otherwise associated with any contract market. Such notice must also advise the customer that there are certain fees and costs incidental to the filing of the complaint, stating them and that the panel may not assess any incremental fees for provision of a panel or decision-maker conforming to the requirements of CFTC Regulation 180.2(a), unless the arbitrators in that particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

- a. For purposes of determining whether a person is "associated with any contract market," the phrase shall include any individual who performs a significant amount of work for any contract market, or a member; and any individual who was a member, or associated with any member, or an employee, of any contract market within the past two (2) years.
- b. A member of the KCBT who is party to an arbitration proceeding shall pay any incremental fees which may be assessed for provision of a panel or decision-maker conforming to the requirement of Regulation 180.2(a), unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

1503.02 Special Panel; Composition. If the customer, following notice as prescribed in Rule 1503.01, makes a written request for a special panel, such panel shall consist of five (5) persons selected as follows:

- a. Two (2) members of the regular Arbitration Committee; selected by listing the members' last names in alphabetical order, and using the highest two (2) on the list who have not been used before, with the first being the sixth, eleventh, etc.
- b. One (1) member selected by mutual agreement, or failing agreement, under the rules of the American Arbitration Association, which member shall be an attorney and shall be the chairman. Such person shall not be a member nor associated with any member of any contract market, and shall not be otherwise associated with any contract market.
- c. Two (2) disinterested persons from the public at large, one (1) of whom shall be selected by each party, but neither of whom shall be members, nor associated with any member of any contract market, nor any employee thereof, and who are not otherwise associated with any contract market.
- d. The parties shall expeditiously make the above selections, so that the hearing will not be unduly delayed.

1503.03 Single Arbitrator. Notwithstanding the above rules, customers may elect a single arbitrator who meets the requirements of CFTC Reg. 180.2 (a).

1503.04 Incremental Fees. A contract market member which is a party to an arbitration proceeding shall pay any incremental fees which may be assessed by a qualified forum for provision of a panel or other decision maker which conforms to the requirements of CFTC Reg. 180.2(a) (i.e. one or more persons, of which at least a majority are not members or associated with any member of any contract market or employee thereof and who are not otherwise associated with a contract market), unless the arbitrator(s) in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding. (CFTC Reg. 180.2(e))

1504.00 Disqualification To Serve. Members of the hearing body shall, upon request, through the Secretary, state in writing to the parties relevant background information, including any circumstance that might prevent the member from acting impartially. Members of the hearing body shall be disqualified to sit as a member of the hearing body 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.

1504.01 Sworn Statement Of Party; Time. The party filing a statement under oath under Rule 1504.00 must do so not later than three (3) days prior to the date set for hearing.

1504.02 Substitute. In the event of a disqualification, and if the parties are unable to agree on a substitute, the parties shall submit to each other three (3) names of disinterested members from which each shall strike two (2) names and submit the remaining two (2) names to the Secretary. From those names submitted, the Secretary shall select the member to act as substitute. All such proceedings must be had so as not to delay the hearing and any substitutes must be impartial and objective as required by Rule 1500.00.

1505.00 Special Committee. If a matter for arbitration under these rules is to be heard by the regularly constituted KCBT Arbitration Committee and, due to absence or disqualification of the regular members, the Arbitration Committee cannot be formed, the parties in the controversy shall be allowed to fill vacancies with any member(s) willing to serve (not being members of the Board of Directors) and upon whom they can 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), upon whom they may agree to hear the matter. In either case, such agreement shall be communicated to the Secretary in writing and signed by all parties in controversy.

1505.01 Award Of Special Committee Binding. An award or finding of the majority of any Committee formed pursuant to Rule 1505.00 shall be binding.

Pre-Hearing Procedures

1506.00 Exchange of Documents and Written Information. The parties to the arbitration shall cooperate with each other in the exchange of relevant documents and written information which may serve to facilitate a fair and equitable hearing. All requests for documents and written information shall be made in writing no later than ten (10) calendar days after an answer is due to an arbitration complaint. Such relevant documents and written information shall be furnished to the requesting party within ten (10) calendar days after the request is made unless an objection is filed to the furnishing of such documents and written information. Unless the hearing body directs otherwise, any such objections will be decided on the written positions of the parties. Upon request of any party to the arbitration copies of documents and written information to be used as exhibits and a list of witnesses to be called (other than those used for rebuttal or cross examination) shall be furnished to the other party and the Secretary. The hearing body may exclude from introduction at the hearing any such documents and witnesses not so identified in advance as

provided in this rule.

1506.01 Preliminary Hearing. The hearing body may, at the written request of a party or the Board of Trade by the Secretary, or on its own motion, schedule a preliminary hearing in appropriate situations. Such hearing may be conducted orally, by telephone conference, or by written submissions. The hearing body may assign a single arbitrator to resolve the issues in the hearing, who shall be the chairman in the case of a special panel.

Duties Of Hearing Body

1507.00 Duties Of Arbitration Committee Or Special Panel. It shall be the duty of the Arbitration Committee or the special panel, as appropriate, to hear and determine all disputes before it pursuant to this Chapter. The Committee or panel shall render a just and equitable award based on the evidence, the law, the Certificate of Incorporation, rules and regulations of the KCBT, and trade practice to the best of its ability.

1507.01 Nonliability. The Arbitration Committee or panel 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.

1508.00 Duty To Attend. Members of the Arbitration Committee, failing to attend when their services are required, shall be fined by the Board of Directors, for the use of the KCBT, \$25.00 for each default, unless a satisfactory excuse shall be made to the Arbitration Committee.

Complaint

1510.00 Written Sworn Complaint; Filing. Any customer desiring to submit a matter in dispute as defined in Rule 1500.01 to the Arbitration Committee of the KCBT or to a special panel, shall file a written sworn complaint with the Secretary, alleging the nature of the dispute, the basic facts, the damages sought, and the name of the member.

1510.01 Time. The written sworn complaint must be filed within one (1) year after the date of the transaction from which the dispute arose.

1510.02 Mandatory joinder. Any customer 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. On failing to do so, the customer shall be barred and estopped from making any claim or demand against any member hereof not so named. This same rule shall apply to counterclaims.

1510.03 Service On Member. A copy of the complaint shall be served by the Secretary on the member.

1510.04 Withdrawal. The customer may withdraw the complaint prior to service of the answer, or thereafter with consent of the member.

Answer

1514.00 Failure By Member To Answer. If the member fails to answer the complaint in writing within ten (10) calendar days after service of copy, or if the member refuses to sign the agreement prescribed in Rule 1517.00, the member shall be deemed to have refused to arbitrate and to have incurred the possibility of disciplinary action by the Business Conduct Committee for such nonaction, including the possibility that the Committee may order an award for the customer.

Agreement To Arbitrate

1517.00 Agreement. Within ten (10) calendar days the parties to the arbitration shall sign the Articles of Agreement in a form to be furnished by the Secretary.

1517.01 Execution By Customer. The customer shall also sign an agreement to abide by and comply with all the terms and provisions of the Certificate of Incorporation, and all orders and resolutions of the Board of Directors, and any committee of the KCBT concerning the arbitration of said demand, and of any counterclaim which the member may present.

1517.02 Execution By Member. Any member or any officer of a member firm may execute an agreement on behalf of such firm or corporation.

Customer Release

1520.00 Release. Every customer presenting a complaint against a member seeking arbitration shall accompany the complaint with a release in the form to be furnished by the Secretary.

1520.01 Held In Trust By Secretary. The Secretary shall hold the release in trust pending the result of arbitration, and shall deliver it to the member in any of the following cases:

- a. If after being ordered to do so by the Committee or panel, or by the Board of Directors, the customer has failed to prosecute the claim within ten (10) days of being notified in writing of the order to prosecute;
- b. If an award is rendered for the member by the Committee or panel; or
- c. If the member pays or offers to pay the customer the amount of award, after deducting any counterclaim in favor of the member.

1521.00 Cancellation And Return Of Release. In the event an award is rendered against a member which is not paid within ten (10) calendar days, then the release shall be cancelled and returned to the customer. Should any unforeseen event render it just and proper that the release be returned, the Board of Directors can direct such to be done.

Counterclaim

1524.00 When Presented. A member shall have the right to present any counterclaim of the character defined in Rule 1500.01, and wherein the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties, or third persons over whom the Board of Trade does not have jurisdiction. Other counterclaims are permissible only if the Customer agrees to the submission after the counterclaim has arisen, and if the aggregate monetary value of the counterclaim is calculable.

1524.01 Reply to Counterclaim. The customer shall reply to the counterclaim in writing within ten (10) calendar days after service of copy.

Hearing

1528.00 General. Hearings shall settle the issues with all practical dispatch. Unnecessary and unreasonable delay by any of the parties shall not be permitted.

1528.01 Time Of Hearing. The time and place of the arbitration hearing shall be determined by the Chairman of the hearing body, and due notice thereof shall be given by the Secretary. Reasonable effort shall be made to accommodate the parties.

1528.02 Postponements. Unless for good cause shown satisfactory to the hearing body, neither party shall postpone the hearing of a case longer than twenty-one (21) calendar days after it has been submitted.

1528.03 Location. Arbitration proceedings conducted under this Chapter must be held in the executive office of the Board of Trade, in Kansas City, Missouri, unless otherwise agreed to by the parties and the hearing body.

1529.00 Representation By Counsel. Each of the parties in an arbitration hearing shall have the right, if desired, to be represented by counsel, at such party's own expense, in any aspect of the procedure.

1530.00 No Ex Parte Contacts. Contacts by any of the parties involving the matter in dispute with members of any panel or Arbitration Committee shall not be permitted except at the hearing.

1531.00 Personal Appearance. Each of the parties shall be entitled to appear in person, or by telephone conference, at such hearing, except, however, those claims or grievances submitted in writing (and any counterclaims applicable thereto) which are in the aggregate under \$2,500 may be resolved without a hearing on the basis of the submitted written documents. The procedures for the resolution of such case based on submission of such written documents shall insofar as possible, follow the rules for submission at a hearing.

1532.00 Citations To Witnesses. The hearing body has the power to issue citations to witnesses upon the written request of the parties, or on its own. Members or the customer served with a citation must appear to testify and bring such documents as required by the citation, at the time and place indicated.

1533.00 Rule Of Construction. In all such adjudications, the hearing body 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.

1534.00 Determining Value. In determining the true market value of property, its value in other markets, or 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 of contracts for future delivery, the buyer or the seller 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 the same may be determined under the foregoing provisions of this rule.

1535.00 Oath Of Arbitration. Before commencing the hearing of a case, the members of any hearing body shall be required to 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 now to be submitted, and that I will make a just and equitable award or finding upon the same, in conformity with the law, 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.

1536.00 Evidence. All evidence before the hearing body shall be taken orally, or by telephone conference, under oath or affirmation.

1537.00 Record Of Proceedings. All testimony and the proceedings of the hearing shall be recorded by a stenographer and/or electronic recorder. The original stenographic or electronic record shall be transcribed or electronically duplicated only upon the request of the hearing body, or of a party. A requesting party shall bear the cost of the transcription or duplication, provided that one (1) copy of any transcript shall be furnished the hearing body, at the expense of such requesting party.

1538.00 Role Of Chairman. The Chairman of the hearing body 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 (Rule 1540.00) 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 hearing body's decision to the parties;
- d. Assign the drafting of the award; and
- e. Sign the final award.

1539.00 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 hearing body members and to witnesses; mark evidence; retain the evidence and the official record; call witnesses; and otherwise serve to facilitate the hearing. The clerk may confer with the hearing body upon its request; when asked, provide nonbinding legal or procedural opinions; and if so instructed, prepare a draft of an award. The clerk may not express an opinion upon the factual issues.

1540.00 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 of the hearing;
- b. Oath of hearing body members administered by hearing clerk;
- c. Introduction, identification of parties, hearing body members, witnesses, clerk, etc;
- d. Administration of oath to witnesses;
- e. Customer's opening statement;
- f. Member'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, and what the parties intend to prove, and to inform the hearing body as to the nature of the case. Opening statements may consist of 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, parties may elect not to have a hearing and to make a written presentation.

- h. Presentation of customer's evidence;
- i. Presentation of member'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 customer;
- k. Rebuttal (if any) by member;

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

- l. Customer announces case closed;
- m. Member 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 closing arguments.

- n. Customer's final argument;
- o. Member's final argument;
- p. Customers 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 hearing body, final arguments may be made in writing and submitted later.

- q. Formal hearing adjourned by Chairman;

Explanation: The hearing body 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 a decision.

Award

1541.00 Arbitration Award; Time. The hearing body shall meet and discuss the case within two (2) business days after the hearing and shall make its decision within ten (10) business days after receipt of the transcript.

1541.01 Award In Writing. The hearing body shall render its award(s) or finding(s) in writing, through the Secretary of the KCBT, within five (5) business days after its decision is made. Such award(s) or finding(s) shall be signed by the persons to whom submitted, and shall be certified by the Secretary under the seal of the KCBT.

1541.02 Contents Of Award. The written award should:

- a. Identify the parties;
- b. State the procedural and substantive issue(s), and the resolution of each;
- c. State the reason(s) for the decision, including the relevant facts;
- d. Announce the name of the prevailing party; and
- e. State the monetary award, if any, to be paid, by and to whom, and direct 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, the issues, the decision, and the reasoning.

1541.03 Modification of Awards. The hearing body may modify or correct an award for clarifying the award; or where there is an evident miscalculation of figures or evident mistake in the description of any person, thing or property; or where the award is imperfect in a matter of form, not affecting the merits of the controversy.

1541.04 Record Of Awards. The Secretary shall keep a record of the cases submitted for adjudication, and the disposition of the same. The Secretary shall also collect all awards and pay them over to the parties in whose favor

they may be and enter the same in the record of the case.

1541.05 Appeal From Award There shall be no right of appeal to any entity within the KCBT which can overturn the settlement procedure decision under the provisions of this Chapter; the only right of appeal being under applicable law. Any party who becomes aware of a judicial appeal of the award shall notify the Board by the Secretary.

1541.06 Compliance With Award. A member's refusal to comply with an award within thirty (30) calendar days of it being rendered in writing (without an appeal being taken), is a violation of KCBT Rules.

Fees

1545.00 Advance Notice Of Fees. The Secretary shall ensure that adequate notice is provided in advance of a submission of a claim, grievance, or counterclaim of the nature and amount of any fees which may be assessed against customers utilizing the procedure.

1546.00 Filing Fee. The Secretary's Office shall receive a nonrefundable filing fee of \$50.00.

1547.00 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 hearing body and shall be as follows:

Where the amount in controversy is	Fee
\$2,500 or less	\$100.00 (\$20.00 per member)
\$2,501 to \$10,000	\$200.00 (\$40.00 per member)
Over \$10,000	\$600.00 (\$120.00 per member)

1548.00 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.

1549.00 Additional Sitting Fee. In all cases brought before the hearing body wherein the evidence is of such volume that it cannot be presented or heard in one (1) sitting, the hearing body shall have power to adjourn the hearing from time to time and to charge, in its discretion, \$10.00 for each additional sitting of not less than three (3) hours.

1550.00 Failure To Appear. If either or both of the parties to a controversy fail to appear at the time set for the hearing, or request a postponement, they may (if the case is postponed) be assessed with costs, by and for the use of the hearing body, in any reasonable sum at the hearing body's discretion. The hearing body, however, may insist that the hearing shall take place without postponement.

1551.00 Who Pays Fees. Fees, and all additional costs that may be incurred, shall be finally paid by either of the parties in the case, as may be decided by the hearing body, and included in its award or finding.

- a. A member of the KCBT who is party to an arbitration proceeding shall pay any incremental fees which may be assessed for provision of a panel or decision-maker conforming to the requirement of Regulation

180.2(a), unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.