

Chapter 31

Arbitration; Cash Market Transactions

Disputes Subject To Arbitration

3100.00	Disputes Subject To Arbitration.....	3103
3101.00	Duty To Arbitrate.....	3103
3101.01	Members Must Arbitrate.....	3103
3101.02	Exception; Preservation Of Property Or Claim.....	3103
3101.03	Exception; Order Of Board Of Directors.....	3103
3101.04	Member; Defined.....	3104

Hearing Body

3105.00	Arbitration Committee.....	3104
	a. Hearing	
	b. Panel	
3106.00	Disqualification To Serve.....	3104
3106.01	Sworn Statement Of Party; Time.....	3104
3106.02	Substitute.....	3104
3107.00	Special Committee.....	3104
3107.01	Award Of Special Committee Binding.....	3104

Duties Of Hearing Body

3110.00	Duties Of Arbitration Committee.....	3105
3110.01	Nonliability.....	3105
3111.00	Duty To Attend.....	3105

Complaint

3115.00	Written Sworn Complaint.....	3105
3115.01	Time.....	3105
3116.00	Mandatory Joinder.....	3105
3117.00	Service On Defendant.....	3105

Answer

3120.00	Failure By Defendant To Answer.....	3105
3121.00	Non-Member Party To Arbitration.....	3105

Agreement To Arbitrate

3125.00	Agreement.....	3106
3125.01	Execution By Non-Member.....	3106
3125.02	Execution By Member.....	3106

Non-Member Release

3127.00	Release.....	3106
3127.01	Held In Trust By Secretary.....	3106
3128.00	Cancellation And Return Of Release.....	3106

Counterclaim

3130.00	When Presented.....	3107
3131.00	Bond From Non-Member.....	3107

Hearing

3132.00	Time Of Hearing.....	3107
3133.00	Postponements.....	3107
3134.00	Location.....	3107
3135.00	Representation By Counsel.....	3107
3136.00	Citations To Witnesses.....	3107
3137.00	Rule Of Construction.....	3107
3138.00	Determining Value.....	3107
3139.00	Oath Of Arbitration.....	3108
3140.00	Evidence.....	3108
3141.00	Record Of Proceedings.....	3108
3142.00	Role Of Chairman.....	3108
3143.00	Role Of Hearing Clerk.....	3108
3144.00	Procedural Guidelines.....	3108

Award

3147.00	Arbitration Award; In Writing.....	3110
3147.01	Contents Of Award.....	3110
3147.02	Record Of Awards.....	3110
3147.03	Inspection.....	3110

Appeal

3150.00	Appeal; How Taken.....	3110
3150.01	Time.....	3110
3151.00	Hearing Body.....	3111
3151.01	New Evidence.....	3111
3152.00	Decision On Appeal.....	3111
3153.00	Award Of Appeals Committee Final.....	3111

Fees

3155.00	Filing Fee.....	3111
3156.00	Fees For Arbitration.....	3111
3157.00	Paid In Advance.....	3111
3158.00	Additional Sitting Fee.....	3111
3159.00	Failure To Appear.....	3111
3160.00	Appeals Fees.....	3112
3161.00	Who Pays Fees.....	3112

Chapter 31

Arbitration; Cash Market Transactions

Disputes Subject To Arbitration

3100.00 Disputes Subject To Arbitration. All disputes, differences, claims, grievances, or disagreements subject to arbitration under this Chapter must arise from cash market transactions as enumerated in paragraphs a. through d. below, and must not be part of, or directly connected with any transactions for the purchase or sale of any commodity for future delivery. Cash market transactions shall include:

- a. Cash sales of grain made on the trading floor,
- b. Cash grain purchased by or from a member to be shipped to or from this market;
- c. Written cash grain agreements containing language such as "subject to Kansas City terms" or words of similar meaning; or
- d. Any other dispute between members or others which they mutually and voluntarily elect to submit to arbitration under this chapter.

Note: See Chapters 15 and 16 for arbitration of disputes arising out of futures contract transactions.

3101.00 Duty To Arbitrate. All disputes, differences, claims, grievances, or disagreements of a financial, mercantile, or commercial character among members, or between members and other parties when such others assent thereto, must be submitted to the Arbitration Committee.

3101.01 Members Must Arbitrate. Any member who shall commence any legal action against another member (unless by agreement) for any dispute arbitrable under this Chapter before first attempting to arbitrate, shall be subject to disciplinary action pursuant to Chapter 33. 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 33.

3101.02 Exception; Preservation Of Property Or Claim. In all cases it is necessary for property to be attached or replevined in order to save or protect the property or a claim, a member may bring a legal proceeding to secure the property or claim by legal process and nothing in Rule 3101.01 shall prevent immediate suit to prevent such loss.

3101.03 Exception; Order Of Board Of Directors. Either party may submit to the Board of Directors a written request that arbitration not be required, stating the reason for such request. Following notice to the other party, both parties may appear before the Board of Directors which may order that arbitration is not required. If such an order is made, that order is final and is not reviewable by the KCBT nor by any court. On the making of such an order, legal proceedings may be commenced by either party.

3101.04 Member; Defined. The word "member" as used in this Chapter 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

3105.00 Arbitration Committee.

- a. **Hearing.** It shall be the duty of the Arbitration Committee to hear and determine all disputes described in Rules 3100.00 and 3101.00.
- 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 strike being determined by a toss of a coin.

Note: Amended by membership vote August 18, 1981.

3106.00 Disqualification To Serve. Members of the Arbitration Committee or Appeals Committee shall be disqualified to sit 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.

3106.01 Sworn Statement Of Party; Time. The party filing a statement under oath under Rule 3106.00 must do so not later than three (3) days prior to the date set for hearing.

3106.02 Substitute. In the event of disqualification, and if the interested parties are unable to agree on the 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 (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.

3107.00 Special Committee. When either the Arbitration Committee or the Appeals 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 other Committee or 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 of the Appeals Committee or 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.

3107.01 Award of Special Committee Binding. An award or finding of any Committee formed pursuant to Rule 3107.00 shall be binding as if made by the regular Arbitration Committee or Appeals Committee.

Duties Of Hearing Body

3110.00 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.

3110.01 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.

3111.00 Duty To Attend. Members of the Arbitration Committee and Appeals Committee, failing to appear when their services are required, shall be fined \$25.00 for each default by the Board of Directors, for the use of the KCBT, unless a satisfactory excuse shall be made.

Complaint

3115.00 Written Sworn Complaint. Any member or other person (Claimant) desiring to submit a dispute as defined in Rules 3100.00 and 3101.00 to the Arbitration Committee for resolution, 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 Defendant.

3115.01 Time. The written sworn complaint must be filed within one (1) year after the date of the transaction from which the dispute arose.

3116.00 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 estopped from making any claim or demand against any member not so made a Defendant. The same rule shall apply to counterclaims.

3117.00 Service On Defendant. A copy of the complaint shall be served by the Secretary on the Defendant.

Answer

3120.00 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 agreement prescribed in Rule 3125.00, the Defendant shall be deemed to have refused to arbitrate and to have incurred the possibility of disciplinary action by the Business Conduct Committee for such non-action, including the possibility that the Committee may order an award for the Claimant.

Note: This rule grants the member ten (10) calendar days to answer.

3121.00 Non-Member Party To Arbitration. In the event a member is compelled to arbitrate a dispute arising out of business transacted by such member as the agent of a non-member, the non-member may be made a party to

the arbitration. If such non-member refuses to become a party, the decision of the Arbitration Committee or Appeals Committee shall be conclusive and binding on such non-member as between the non-member and the agent as if a party.

Agreement To Arbitrate

3125.00 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.

3125.01 Execution By Non-Member. If the Claimant is a non-member, 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 or any committee of the KCBT concerning the arbitration of said demand, and of any counterclaim which the Defendant may present, shall be signed by Claimant.

3125.02 Execution By Member. Any member or any officer of a member firm may execute an agreement on behalf of such firm or corporation.

Non-Member Release

3127.00 Release. A non-member presenting a complaint against a member and seeking arbitration, shall accompany the complaint with a release in the form to be furnished by the Secretary.

3127.01 Held In Trust By Secretary. The Secretary shall hold the release in trust pending the result of arbitration, and shall deliver it to the Defendant in any of the following cases:

- a. If the Claimant does not prosecute the claim before the Arbitration Committee after being ordered to do so by said Committee, or by the Board of Directors;
- b. If the Defendant shall present a counterclaim against the Claimant, and the Claimant fails to comply with an order of the Board of Directors requiring giving of a bond, as required by Rule 3131.00 within ten (10) calendar days;
- c. If an award is rendered for the Defendant by the Arbitration Committee, or following appeal, by the Appeals Committee; or
- d. If the Defendant pays or offers to pay the Claimant the amount of the award, after deducting any counterclaim adjudged in favor of the Defendant.

3128.00 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 Claimant. 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

3130.00 When Presented. Any Defendant shall have the right to present any counterclaim of the character described in Rules 3100.00 and 3101.00 against the Claimant.

Note: Mandatory joinder of counterclaims is required pursuant to Rule 3116.00.

3131.00 Bond From Non-Member. The Board of Directors may require the giving of a bond, with approved security, as the Board of Directors may determine to be reasonable and proper to secure to the Defendant any balance on a counterclaim which might be adjudged to such Defendant.

Hearing

3132.00 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 due notice thereof shall be given by the Secretary. Reasonable effort shall be made to accommodate the parties.

3133.00 Postponements. Unless for good cause shown satisfactory to the Committee, neither party shall postpone the hearing of a case longer than twenty-one (21) calendar days after it has been submitted.

3134.00 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 Arbitration Committee.

3135.00 Representation By Counsel. None of the parties to arbitration proceedings under this Chapter shall be permitted to be represented by professional counsel nor by any other member who is paid for so appearing. Counsel or other members may, however, be present to advise their clients but they may not participate directly in the proceedings.

3136.00 Citations To Witnesses. The Arbitration Committee or Appeals 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 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 action under Chapter 33.

3137.00 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.

3138.00 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.

3139.00 Oath Of Arbitration. Before commencing the hearing of a case, the members of any Arbitration Committee or Appeals 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.

3140.00 Evidence. All evidence before the Arbitration Committee shall be taken orally under oath or affirmation.

3141.00 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.

3142.00 Role Of Chairman. The Chairman of the Committee shall perform the following functions:

- a. Set the time and date for the hearing in consultation with the other Committee members and the parties;
- b. Convene and conduct the hearing in an orderly fashion following the procedural guidelines (Rule 3144.00) to the extent practicable;
- c. Consult with the Committee 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 Committee's decision to the parties;
- d. Assign the drafting of the award; and
- e. Sign the final award.

3143.00 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 Committee 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.

3144.00 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 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 non-disputed 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 closing 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 a decision.

Award

3147.00 Arbitration Award; In Writing. The Arbitration Committee (and Appeals 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 under the seal of the Board of Trade.

3147.01 Contents Of Award. The written award should:

- a. Identify the parties;
- b. State the controlling issue(s) in dispute;
- c. Announce the name of the winning 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.

3147.02 Record Of Awards. The Secretary shall keep a record of the cases submitted for the adjudication of the Arbitration Committee and Appeals 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 same in the record of the case.

3147.03 Inspection. The official record and decisions of the Committees and all other records of the case, may be inspected by any member upon 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.

Appeal

3150.00 Appeal; How Taken. The award of the Arbitration Committee may be appealed to the Appeals Committee.

3150.01 Time. A written notice of appeal must be given to the Secretary within ten (10) calendar days after receipt of the award of the Arbitration Committee by the losing party.

3151.00 Hearing Body. It shall be the duty of the Appeals Committee to hear and determine all cases properly appealed from the decision of the Arbitration Committee and to render a just and equitable award thereon according to the evidence, the Certificate of Incorporation, the rules and regulations of the KCBT, and the laws of the land to the best of their ability.

3151.01 New Evidence. The Appeals Committee may receive new evidence as may be offered under oath or affirmation. If, in its judgment, sufficient new evidence is produced so as to justify a rehearing of the case by the Arbitration Committee, it shall remand the case to the Arbitration Committee for a new hearing.

3152.00 Decision On Appeal. The final award of the Appeals Committee shall be based on the record of the Arbitration Committee and shall be made in like manner as prescribed by Rules 3147.00, 3147.01, 3147.02 and 3147.03.

3153.00 Awards Of Appeals Committee Final. The award of the Appeals Committee shall be final and binding, and shall not be subject to revision by any other tribunal; provided however, the Board of Directors may determine, from the record and other evidence, the proper constitution of any Committee and the regularity of its proceedings.

Fees

3155.00 Filing Fee. The Secretary's Office shall receive a non-refundable filing fee of \$50.00.

3156.00 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:

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)

3157.00 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.

3158.00 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 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.

3159.00 Failure To Appear. If either of the parties fails to appear at the hearing, or requests a postponement, they 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 \$50.00. The Committee, however, may insist that the hearing shall take place without postponement.

3160.00 Appeal Fees. The hearing fees of the Appeals Committee shall be the same as the fees in the same case before the Arbitration Committee and shall be paid and disposed of in the same manner.

3161.00 Who Pays Fees. Fees, and all additional costs that may be incurred in 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 its award or finding.