

## **Rule 10**

### **Disciplinary Proceedings and Appeals**

#### **Disciplinary Jurisdiction**

Rule 10.1(a). An OTP Holder, OTP Firm [member, member organization] or [a person] associated person of an OTP Firm [with such member or member organization] who is alleged to have violated or aided and abetted a violation of any provision of the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, or any provision of the Exchange's Bylaws [Constitution] or Rules or any commentary thereof, any [or] resolution of the Board of Directors [Governors] of the Exchange regulating the conduct of business on the Exchange, or policy or procedure of the Exchange shall be subject to the disciplinary jurisdiction of the Exchange under this Rule, and after notice and opportunity for a hearing may be appropriately disciplined by cancellation of trading privileges expulsion, suspension, limitation of activities, functions, and operations, suspension or bar from association with an OTP Holder or OTP Firm [member, or member organization], fine, censure or any other fitting sanction, in accordance with the provisions of this Rule. An OTP Firm [member organization] may be charged with any violation committed by its employees or its OTP Holder [a member] or other person who is associated with such OTP Firm [member organization], as though such violation were its own.

(b) Any OTP Holder, OTP Firm [member, member organization] or [a person] associated person of an OTP Firm [with a member] shall continue to be subject to the disciplinary jurisdiction of the Exchange following suspension or cancellation of an OTP or such person's termination of [membership] or association with an OTP Firm [member] with respect to matters that occurred prior to such termination; provided ~~that~~ written notice of the commencement of an inquiry into such matters is given by the Exchange to such former OTP Holder, OTP Firm [member, member organization] or associated person of an OTP Firm within one year of receipt by the Exchange of written notice of the termination of such person's status as an OTP Holder, OTP Firm [member, member organization], or [person] associated person of an OTP Firm [with a member].

#### **Investigations and Regulatory Cooperation**

Rule 10.2(a). The Exchange's Chief Regulatory Officer and his or her delegees [Regulatory Staff] will function independently of the commercial interests of the Exchange and the commercial interests of the OTP Holders and OTP Firms [members] and the Chief Regulatory Officer or his or her delegees will have the sole discretion to investigate, and will investigate, possible violations within the disciplinary jurisdiction of the Exchange. No member of the Board of Directors [Governors or the Executive Committee] or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

(b) Any person, any Exchange committee, or the Board of Directors [Governors or the Executive Committee] may submit for investigation a complaint alleging possible violations. Each complaint must specify in reasonable detail the facts constituting the violation and any specific federal statute, rule, regulation or any provision of the Exchange's [constitutional provision, rule] Rules, Bylaws, commentar[y]ies, resolutions, polic[y]ies or procedures allegedly violated.

(c) An OTP Holder, OTP Firm [member, member organization] or associated person of an OTP Firm is entitled to be represented by counsel during any Exchange investigation.

(d) No OTP Holder, OTP Firm [member, member organization], associated person of an OTP Firm or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1[(b)] may impede or delay a[n Exchange] regulatory investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange or refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange will be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.

(e) An OTP Holder, OTP Firm, or associated person of an OTP Firm [member or member organization] must submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be the subject of a particular request for information made by the Exchange. Failure to submit such data in the required format will be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.

*Commentary:*

.01(A) If the transaction was a proprietary transaction effected or caused to be effected by the OTP Holder or OTP Firm [member or member organization] for any account in which such OTP Holder, OTP Firm or associated person of an OTP Firm [member or member organization, or any member, allied member, approved person, partner, officer, director, or employee thereof,] is directly or indirectly interested, such OTP Holder or OTP Firm [member or member organization] shall submit or cause to be submitted the following information:

(i) Clearing house number, or alpha symbol, as used by the OTP Holder or OTP Firm [member or the member organization] submitting the data;

(ii) Clearing house, number(s), or alpha symbol(s) as may be used from time to time, of the OTP Holder(s) or OTP Firm(s) [member(s) or member organization(s)] on the opposite side of the transaction;

(iii) Identifying symbol assigned to the security;

(iv) Date transaction was executed;

(v) Number of shares, or quantity of bonds or option contracts for each specific transaction and whether each transaction was a purchase, sale, short sale and, if an option contract, whether open long or short or close long or short;

(vi) Transaction price;

(vii) Account number; and

(viii) Market center where transaction was executed.

(B) If the transaction was effected or caused to be effected by the OTP Holder or OTP Firm [member or member organization] for any customer account, such OTP Holder or OTP Firm [member or member organization] shall submit or cause to be submitted the following information:

(i) Data elements (i) through (viii) as contained in paragraph (A) above; and

(ii) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax Identification number(s).

(iii) If transaction was effected for a customer [member] of a broker-dealer [customer], whether the broker-dealer was acting as principal or agent on the transaction [or transactions] that is [are] the subject of the Exchange's request.

(C) In addition to the above trade data elements, an OTP Holder or OTP Firm [member or member organization] shall submit such other information in such automated format as may be prescribed by the Exchange, as may from time to time be required.

(D) The Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (A) and (B) above be submitted to the Exchange in an automated format.

(f) No OTP Holder, OTP Firm [member or member organization], associated person of an OTP Firm, or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1[(b)], may refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation,

examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange or its self-regulatory organization pursuant to Rule 3.6 [14.1]. The requirements of this Rule 10.2(f) will apply regardless of whether the Exchange has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.4 [10.5].

*Commentary:*

.01 The term "exchange" and "self-regulatory organization," as used in Rule 10.2(f), will include, but are not limited to, any member or affiliate member of the Intermarket Surveillance Group.

.02 Any person or entity required to furnish information or testimony pursuant to Rule 10.2(f) will be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.

### **Ex Parte Communications**

Rule 10.3(a). *Prohibited Communications.* Unless on adequate notice and reasonable opportunity for all parties to participate:

(1) No person who is a subject of a pending Exchange investigation ("Subject") or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, or any interested PCX staff, with knowledge of a pending Exchange investigation or disciplinary proceeding may make, or knowingly cause to be made, an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors [Governors]; (b) [a member of the Executive Committee; (c)] a person who advises the Board of Directors [Governors or the Executive Committee; (d)] (c) any member of the Exchange Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; or (d) [(e)] a member of the Ethics and Business Conduct Committee ("EBCC") or Board Appeals Committee [a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding].

(2) No person who is a member of the EBCC or Conduct Panel, as defined in Rule 10.5(a), [a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding, or any interested PCX staff,] with knowledge of a pending investigation or disciplinary proceeding or interested Exchange staff, may make, or knowingly cause to be made, an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of

Directors [Governors;] (b) [a member of the Executive Committee; (c)] a person who advises the Board of Directors [Governors or the Executive Committee; (d)] (c) any member of Exchange Regulatory Staff; or (d) [(e)] the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent.

(3) No person who is a member of the Board of Directors [Governors or the Executive Committee,] or any person who advises the Board of Directors [Governors or the Executive Committee], or any interested PCX staff, with knowledge of a pending investigation or disciplinary proceeding may knowingly make, or cause to be made, an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) any member of the Exchange's Regulatory Staff; (b) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (c) a member of the EBCC or Conduct Panel [a Hearing Panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding].

(b) *Disclosure of Prohibited Communications.* Any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to Exchange Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding:

- (1) all such written communications;
- (2) memoranda stating the substance of all such oral communications; and
- (3) all written responses and memoranda stating the substance of any oral responses to such communications.

(c) *Remedies.* Any OTP Holder, OTP Firm [member or member organization], or associated person of an OTP Firm who made, or knowingly caused to be made, an ex parte communication prohibited by subsection (a) will be subject to disciplinary action. Furthermore, the EBCC [an Exchange disciplinary committee], to the extent consistent with the interests of justice, may issue to the OTP Holder, OTP Firm [member or member organization], associated person of an OTP Firm, or interested PCX Staff responsible for the communication, or who benefited from the communication, an order to show cause why the claim, defense or interest of the OTP Holder, OTP Firm [member or member organization], associated person of an OTP Firm, or interested PCX Staff should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and Exchange Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the investigation or disciplinary proceeding.

(d) *Permitted Communications*. Nothing in this Rule prohibits the members of a disciplinary committee or Exchange Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with:

- (1) the adjudication of the investigation pursuant to the Minor Rule Plan;
- (2) the determination of whether to impose informal discipline;
- (3) the determination of whether to authorize a complaint or take no further action; or
- (4) the determination of whether to accept an offer of settlement.

(e) No [person] member of the EBCC or Conduct Panel [who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding] may participate in a matter governed by Rule 10.3(c) as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such cases, such persons must recuse themselves or they will be disqualified as follows:

- (1) The Chief Regulatory Officer has the authority to direct the disqualification of the interested member of the EBCC or Conduct Panel [Hearing Panel or disciplinary committee].
- (2) The Chief Executive Officer has the authority to direct the disqualification of the Chief Regulatory Officer.

*Commentary:*

.01 "Ex parte communication" means an oral or written communication made without notice to all parties, i.e., Exchange Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

### **Complaints**

Rule 10.4(a). The Chief Regulatory Officer and his or her delegee(s) have [Any standing committee designated by the Board of Governors to review disciplinary proceedings, and Exchange Regulatory Staff designated by the Exchange, has] the authority to determine whether there is probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and if [that] further

proceedings are warranted. If the Exchange Regulatory Staff ("the Complainant") determines that further proceedings are warranted, then the Exchange Regulatory Staff will initiate a formal disciplinary action by preparing a statement of charges ("the Complaint") against any OTP Holder, OTP Firm [member or member organization], or associated person of an OTP Firm alleged to have committed a violation ("the Respondent") specifying the acts in which the Respondent is alleged to have engaged in, or which the Respondent is alleged to have omitted, and alleging the specific provisions of the Bylaws, Rules, policies or procedures of the Exchange, or the rules regulations and procedures promulgated under the Securities Exchange Act of 1934, [as amended, rules and regulations promulgated thereunder, Exchange constitutional provisions, rules, commentaries, resolutions, policies or procedures,] of which such acts or omissions are alleged to be in violation.

(b) At any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. After service of the written answer, the EBCC [hearing panel] may allow amendment of the Complaint upon submission of a written motion by the Exchange Regulatory Staff and a showing of good cause.

The Respondent shall have 15 business days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to submit and may be accompanied by documents in support of the [his] answer or defense. In the event the Respondent fails to file an answer, the charges shall be considered to be admitted.

The time period to file any answer may be extended for such further periods as may be granted by the Exchange Regulatory Staff, if such request for extension of the filing period is received by the Exchange Regulatory Staff within five business days prior to the date on which the answer is due.

### **Summary Determinations**

(c) [*Summary Determinations.*] Notwithstanding the provision of Rule 10.5, the EBCC [Hearing Committee] may make a determination without a hearing and may impose a penalty as to such charges which the Respondent has admitted or has failed to answer or which otherwise do not appear to be in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent.

#### *Commentary:*

.01 The term "probable cause" means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.

## Hearing

Rule 10.5(a). Upon Respondent's filing an answer, the Respondent may request a hearing. The EBCC [An appropriate Committee of the Exchange ("the Hearing Committee")] shall appoint [one] **three** or more members to hear the matter ("the Conduct Panel"). Parties shall be given at least 15 calendar days notice of the time and place of the hearing and a statement of the matters to be considered therein.

(b) Prior to the hearing, the Parties shall be notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted to the Hearing Administrator within five business days of receipt of the notification regarding the composition of the Conduct Panel.

(c) At least five business days prior to the hearing the parties shall submit to the Hearing Administrator a list of witnesses and any documentary evidence or other materials to be presented at the hearing. The Hearing Administrator shall immediately furnish such list of witnesses, documentary evidence or other materials to the other parties.

(d) At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by one or more representatives of the Exchange, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Conduct Panel and other parties. The Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No OTP Holder, OTP Firm [member or member organization], or [person] associated person of an OTP Firm [of with a member] shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the record.

(e) Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Conduct Panel that the party [he] has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede the party's [his] ability to protect that interest. Also, the Conduct Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in

common. Any person wishing to intervene as a party to a hearing shall file with the Conduct Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Conduct Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

### **Offers of Settlement**

Rule 10.6(a). At any time prior to decision by the Conduct Panel the Respondent may submit to the EBCC [Hearing Committee] a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to a specified penalty. Where the EBCC [Hearing Committee] accepts an offer of settlement, it shall issue a decision, including findings and conclusions and impose a penalty, consistent with the terms of such offer. Where the EBCC [Hearing Committee] rejects an offer of settlement, it shall notify the Respondent and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the EBCC [Hearing Committee] issued upon acceptance of an offer of settlement as well as the determination of the EBCC [Hearing Committee] whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof.

(b) If there is more than one Respondent in a proceeding and one or more of said Respondents submits an offer of settlement, the EBCC [Hearing Committee] may accept or reject such offers from any one or all of the Respondents submitting such offers. The proceedings shall be dismissed as to those Respondents whose offers have been accepted, and the proceedings shall continue as scheduled for the remaining Respondents.

### **Decision**

Rule 10.7. Within thirty calendar days after the date of a hearing conducted pursuant to Rule 10.5[4], the Conduct Panel shall prepare a decision in writing determining whether the Respondent has committed a violation and imposing the penalty, if any, therefor. The decision shall include a statement of findings and conclusions, with the reasons therefore upon all material issues presented on the record. Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted, and setting forth the specific provisions of the Bylaws, Rules, policies or procedures of the Exchange, or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, [as amended, rules and regulations promulgated thereunder, the Exchange Constitution, the Rules of the Board of Governors, commentaries, resolutions, policies or procedures] which the act or omission to act are deemed to violate. The Respondent shall be promptly sent a copy of the decision. The determination of the Conduct Panel and any penalty imposed shall become final fifteen calendar days after notifying the Respondent; provided, however, that if a

request for review of such determination and penalty, or both, is filed as hereinafter provided, the penalty shall be stayed pending outcome of that review.

### **Review**

Rule 10.8(a). Either the Complainant or the Respondent may request a review of the decision pursuant to Rule 10.7 or a summary determination pursuant to Rule 10.4(c) [to] by petitioning the Board Appeals Committee of the Board of Directors [Governors] for such review within 15 calendar days after service of notice of a decision made pursuant to Rule 10.7 or 10.4(c). Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned. Respondent shall submit a filing fee of \$500 with its request for review. The Board [of Governors] Appeals Committee may waive such filing fee upon a showing of hardship or other compelling reason. If the decision is overruled in whole, the filing fee shall be refunded. If the decision is overruled in part as a result of Respondent's request for review, refund of the filing fee, or any portion thereof, shall be in the discretion of the Board Appeals Committee [Review Board].

(b) The Board [of Governors] Appeals Committee may appoint a Board Appeals Committee Panel (“Appeals Panel”) [one or more Appeals Committees] to conduct reviews of disciplinary proceedings[. The Board of Governors may delegate authority to the Executive Committee to make such appointments] or may decide to conduct review proceedings on its own. The composition of the Appeals Panel will be determined by the Board Appeals Committee in accordance with Rule 3.3(a)(1). [An Appeals Committee may be composed of persons who are members of the Board of Governors, or of persons who are not members of the Board of Governors, or partly of persons who are members of the Board of Governors and partly of persons who are not members of the Board of Governors. The Executive Committee shall determine the size of any Appeals Committee appointed by it, and an Appeals Committee may be composed of only one member.] The body conducting the review, whether the Board [of Governors] Appeals Committee itself or an the Appeals Panel [Committee], is referred to herein as “the Review Board.” Unless the Review Board shall decide to open the record for the introduction of new evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The standard of review shall be de novo. Based upon such review, the Review Board may affirm, reverse or modify in whole or in part, the decision of the Conduct Panel. Such modification may include an increase or decrease of the sanction. The decision of the Review Board shall be in writing and, except as set forth in Rule 10.8(c) or 10.8(d) below, shall be final.

Each Review Board member shall be required to disclose to the Board of Directors [Governors] any circumstances which might preclude such Review Board member from rendering an objective and impartial determination. Prior to the commencement of the first hearing session, the Board of Directors [Governors] may remove a Review Board member who discloses such information. The Board of Directors

[Governors] shall also inform the parties of any information disclosed pursuant to this section, if the Review Board member who disclosed the information is not removed.

In the event that any Review Board member, after the commencement of the Review, but prior to the rendition of the decision, should become disqualified, resign, die, refuse or be unable to perform or discharge his duties, the Board of Directors [Governors], upon such proof as they deem satisfactory, shall either (a) appoint a new member to the Review Board to replace such member; or (b) direct that the Review proceed without the substitution of a new member.

(c) Notwithstanding anything else contained in this Rule, the Board of Directors [Governors] may, on its own initiative, order review of a decision made pursuant to Rule 10.5 or 10.7 within 30 calendar days after notice of the decision has been served on the Respondent. If the Board of Directors [Governors] does not order review of a decision made pursuant to Rule 10.5 or 10.7 within the period specified in this paragraph, the decision shall become final. Such review shall be conducted in accordance with the procedure set forth in Rule 10.8(b) of this Rule.

(d) The Board of Directors [Governors] may, on its own initiative, order review of a decision made by an Appeals Committee pursuant to Rule 10.8(b) of this Rule within 30 calendar days after notice of the decision has been served on the Respondent. If such review is held, it shall be conducted in accordance with the procedure set forth in Rule 10.8(b) of this Rule as if the Board of Directors [Governors] had conducted the initial review, except that the record shall include the decision of the Appeals Panel [Committee] and any exceptions filed by the parties to such decision. If the Board of Directors [Governors] does not order review of a decision of an Appeals Panel Committee within the period specified in this paragraph, the decision of the Appeals Panel [Committee] shall become final.

(e) Nothing contained in this Rule affects any right which a Respondent may have to seek review of an Exchange decision by the Securities and Exchange Commission.

### **Judgment and Penalty**

Rule 10.9(a) An OTP Holder, OTP Firm, [member, member organization] or an [person] associated person of an OTP Firm [with such member or member organization] shall be subject to appropriate discipline by the Exchange for violations under this Rule including: cancellation or suspension of trading privileges expulsion, suspension, limitation of activities, functions and operations, suspension or bar from association with an OTP Holder or OTP Firm, [member, member organization], fine, censure, or any other fitting sanction.

(b) Penalties imposed under this Rule shall not become effective until the Exchange review process is completed or the decision otherwise becomes final.

(c) Notwithstanding anything contained in this Rule to the contrary, the Exchange may impose such conditions and/or restrictions on the activities of the Respondent as the Exchange considers reasonably necessary for the protection of investors and of the Exchange.

Rule 10.10 – Reserved. [**Miscellaneous Provisions**]

Rule 10.10(a). Any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at his place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at his address as it appears on the books and records of the Exchange.

(b) Any time limits imposed under this Rule for the submission of answers, petitions or other materials may be extended only by prior written approval of the Exchange.

*Commentary :*

.01 The Board of Governors may designate any Standing or Special Committee of the Exchange as the Hearing Committee in any given proceeding or type of proceeding.

.02 The procedures set forth in Rule 10.4 and 10.8 shall not apply in cases where Floor Citations are issued for violations of Rules, policies or procedures adopted by the Exchange and the fine or fines imposed are five hundred dollars (\$500.00) or less. (Reference is made to Rule 10.11 for review procedures which apply to Floor Citations.)]

**Appeal of Floor Citations and Minor Rule Plan Sanctions**

Rule 10.11(a). This Section provides the following procedures for persons aggrieved by Exchange action taken pursuant to the provisions of the Bylaws [Constitution] and Rules of the Exchange for which action an OTP Holder, OTP Firm, or associated person of an OTP Firm [member] has been sanctioned via floor citation or pursuant to Rule 10.12 [10.13] (the Minor Rule Plan), and applies for an opportunity to make an oral presentation or to have the matter reviewed on the papers alone. (This Section shall not apply to disciplinary action taken pursuant to Rule 10.4 [10.3] herein, non-disciplinary action taken pursuant to Rule 10.14 [10.7(a)] herein, or to an action in Arbitration[, from which there is no review].)

(b) *Submission of Application to Exchange.* Any OTP Holder, OTP Firm, or associated person of an OTP Firm [person] who is aggrieved by any action of the Exchange within the scope of this Section and who desires the opportunity to make an oral presentation with respect to such action or to have such action reviewed on the papers alone shall file a written application with the Enforcement [Compliance] Department within five business days after notification that such action has been taken. The notification submitted by the Exchange shall state the specific grounds for the action taken by the Exchange, and shall notify the party [applicant] of the party's [his] right to make an oral presentation or to have the matter reviewed on the papers alone. The

application shall contain: (1) an identification of the Exchange action over which the review is being requested; (2) the reason(s) why the applicant disagrees with such action; and (3) [state the complained of action, the specific reasons why the applicant takes exception to such action, and] the relief sought. In addition, the application shall indicate whether the applicant desires to make an oral presentation, in which event it shall be considered a "request for a hearing," or to proceed only upon the existing and/ or any additional documents or materials, in which event it shall be considered a "request for a review on the papers." [(Hereinafter, the terms "hearing" and "review on the papers" shall be referred to jointly as the "Proceeding(s)."]

(c) *Intervention.* Any person associated with the applicant whose interest might be affected by the Proceeding shall be entitled to participate as a party. Further, in the discretion either of the Conduct Panel appointed pursuant to paragraph (d) [(c)] hereof or of the Board of Directors [Governors] ("Board"), any other person whose interests might be affected by the Proceeding may be permitted to intervene in the Proceeding, and may be granted such rights of a party as either the Conduct Panel or the Board, as the case may be, deems appropriate. Any determination of the Conduct Panel as to participation in the Proceedings is subject to appellate review by the Board at the close of the Proceedings or, in the Board's discretion, during the course of the Proceedings.

(d) *Procedure Following Application for Hearing and/or Review on the Papers.*

(1) *Appointment of the Panel.* Applications for hearing and/or review on the papers shall be referred to the EBCC [Exchange Committee responsible for the complained of action]. The EBCC [appropriate Committee] shall appoint a Conduct Panel pursuant to Rule 10.5(a) [composed of three members of the Committee or other approved members]. The Conduct Panel [so appointed] shall be furnished with all materials considered by the Exchange Regulatory Staff [or the Committee] in connection with its initial action. Parties to the Proceedings shall be notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted within 5 business days of receipt of the notification regarding the composition.

(2) *Additional Submissions and Notice.* Within fifteen business days after receipt of the notification regarding composition of the Conduct [p]Panel, as referred to in paragraph one (1) above, the applicant, if the application is for a review on the papers, shall submit to the Conduct Panel any additional documents, statements, arguments or other materials. The Exchange Regulatory Staff will then have fifteen business days to submit to the Conduct Panel any additional documents, statements, arguments or other materials in response to the applicant's submission. If the application is for a hearing, the parties may, at this time, request an opportunity to call witnesses to the hearing; the Conduct Panel, in its discretion, may or may not grant this request. In the event of a hearing, each party shall furnish to the Conduct Panel and to the other parties, not less than five business days in advance of the scheduled hearing date, copies of all documentary

evidence such party intends to present at the hearing. Parties shall be given at least 15 business days notice of the time and place of the hearing.

(3) *Conduct of the Proceeding.* Whether the Proceeding is a hearing or a review on the papers alone, the Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the Proceeding. The formal rules of evidence shall not apply. In the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses pursuant to paragraph (d)(e)(2), present documentary evidence, cross-examine witnesses and present closing arguments. The Conduct Panel shall have the right to question all parties and witnesses to the Proceeding. The Conduct Panel may also request the production of documentary evidence and witnesses. No OTP Holder, OTP Firm, [member] or [person] associated person of an OTP Firm [with a member], or employee of the Exchange, shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.

(4) *The Decision of the Panel.* Within 30 calendar days after the date of the hearing or the review on the papers, the Conduct Panel shall render its decision. The standard of review shall be de novo. The Conduct Panel may confirm, reverse or modify in whole or in part the decision of the Exchange Regulatory Staff [Committee], and may make any findings or conclusions which in its judgment are proper. The decision of the Conduct Panel shall be in writing, shall contain a concise statement setting forth the specific findings and conclusions of the Conduct Panel and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(5) If after a hearing or review on the papers pursuant to subsection (d) of this Rule, the Conduct Panel determines that an OTP Holder, OTP Firm, or associated person of an OTP Firm [Member or Member Organization] has violated one or more Exchange rules, as alleged, the Conduct Panel: (i) may impose any one or more of the disciplinary sanctions authorized by the Exchange's Bylaws [Constitution] and Rules; and (ii) shall impose a forum fee against the person charged in the amount of two hundred fifty dollars (\$250) if the determination was reached based on a review of the papers, or in the amount of five hundred dollars (\$500) if a hearing was conducted. However, notwithstanding the foregoing, in the event that the Conduct Panel determines that the OTP Holder, OTP Firm, or associated person of an OTP Firm [Member or Member Organization] has violated one or more Exchange rules, as alleged, and the sole disciplinary sanction imposed by the Conduct Panel [Committee] for such rule violation(s) is a fine which is less than the total fine initially imposed by the

Exchange Regulatory Staff for the subject violation(s), the Conduct Panel [Committee] shall have the discretion to waive the imposition of a forum fee.

(6) *Appellate Review by the Board of the Panel's Decision.* The decision of the Conduct Panel shall be subject to appellate review by the Board of Directors (“Board”) either on the Board's own motion within thirty calendar days after issuance (or upon presentation to the Board, whichever is later), or upon written petition of any party to the Proceeding filed within fifteen business days after issuance. Such appellate review of the Proceedings shall be in accordance with paragraph (e)[(d)] hereof.

(e) *Procedure Following Petition for Appellate Review by the Board.*

(1) *Additional Submissions and Appointment of the Appellate Board Panel.* Petitions for appellate review of the Proceeding pursuant to paragraph (d)(6)[(c)(5)], shall be referred to the Board which shall be furnished with all material considered by the Exchange Regulatory Staff [Committee] and the [or] Conduct Panel. Parties may submit a written statement to the Board and may request an opportunity to make an oral presentation before the Board. [; t]The Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Board Appeals Committee Panel (“Appeals Panel”) [Appellate Review Panel] appointed by the Board. A transcript shall be made of any oral presentation and shall become part of the record.

(2) *Decision of the Appeals [Appellate Review] Panel.* [Appellate] Review by the Appeals Panel [Board pursuant to paragraph (c)(5)] shall be made upon the material furnished it by the Exchange Regulatory Staff [Committee] or Conduct Panel as well as by the parties, and shall be made after such further proceedings as the Appeals Panel [Board] shall order. The standard of review shall be de novo. The Appeals Panel [Board] may confirm, reverse or modify in whole or in part the decision of the Regulatory Staff [Committee] or Conduct Panel and may make any findings or conclusions which in its judgment are proper. The decision of the Appeals Panel [Board] shall be in writing, shall contain a concise statement of the findings and conclusions of the Appeals Panel [Board] and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(f) Nothing contained in this Rule shall affect any right which a Respondent may have to seek review of the Exchange's decision by the Securities and Exchange Commission.

**[Hearings and Review General**

Rule 10.12. Refer to Rule 10.11]

### **Minor Rule Plan**

Rule 10.12 [10.13](a). In lieu of initiating a formal disciplinary action or proceeding, the Exchange may, subject to the requirements set forth in this Rule 10.12 [10.13], impose a fine not to exceed \$5,000 on any OTP Holder, OTP Firm, [member, member organization] or [person] associated person of an OTP Firm [with a member or member organization], for any violation of an Exchange Rule that has been determined to be minor in nature.

(b) Whenever it appears that an OTP Holder, OTP Firm, [member, member organization] or [person] associated person of an OTP Firm [with a member or member organization] has violated a rule under this Minor Rule Plan, the Exchange shall serve on such person or organization a written statement setting forth (i) the Exchange Rule(s) alleged to have been violated; (ii) the act or omission constituting each such violation; and (iii) notice that such person or organization may submit a written statement to a designated committee for its consideration.

(c) The EBCC [Executive Committee, the Ethics and Business Conduct Committee, the Options Floor Trading Committee, the Equity Floor Trading Committee] and Exchange Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule.

(d) If a person or organization that has been fined pursuant to this Rule pays the fine, such payment shall be deemed a waiver of any right to a disciplinary proceeding under Rule 10.11 and of any right to review of the matter by the EBCC, Board Appeals Committee, or the Board of Directors [Governors].

(e) Any person or organization that has been fined pursuant to this Rule may contest such fine by filing with the Enforcement [Compliance] Department a written application meeting the requirements of Rule 10.11. Such written application must be submitted not more than five business days after receipt of written notification that a fine has been imposed pursuant to this Rule. If a determination is contested pursuant to this subsection, the matter shall become a formal disciplinary action, and any penalty imposed by a hearing panel shall be publicly reported [to the Exchange membership] after such decision has become "final" pursuant to Rule 10.7. Pursuant to Securities Exchange Act Release No. 34-30958, any person or organization found in violation of a minor rule under this plan is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of \$2,500 will be subject to current rather than quarterly reporting to the Securities and Exchange Commission pursuant to Rule 19d-1 under the Securities Exchange Act of 1934.

(f) Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under Rule 10.4 [10.3] rather than under this Rule.

(g) *Floor Citations.* Exchange staff, a Trading [A Floor] Official, an Options Order Book Official or any PCX Regulatory Staff designated by the Exchange may issue a Floor Citation to any OTP Holder, OTP Firm, [member, member organization] or [person] associated person of an OTP Firm [with a member or member organization], when it appears to such Official(s) that a Minor Rule Plan violation specified in subsections (h) or (i) of this Rule has occurred. In issuing a Floor Citation, the Exchange staff, Trading Floor Official, the Options Order Book Official or any PCX Regulatory Staff designated by the Exchange must:

- (1) Apprise the person cited of the alleged violation;
- (2) Ask the person cited to indicate by signature on the citation acknowledgment of receipt of the citation; provided that the requested signature: is for receipt purposes only and a failure or unwillingness to sign is not to be considered as invalidating the issuance of the citation;
- (3) Give the top copy of the citation to the person alleged to have committed the violation; and
- (4) Give the remaining copies of the citation to the Order Book Official or an appropriate staff person, who will then forward such copies to the Regulation Department for processing.

Except as provided in Rule 10.13 (Summary Sanction Procedure), the circumstances underlying the issuance of each floor citation shall be reviewed by the Ethics and Business Conduct Committee [a designated committee] for a determination of whether the evidence is sufficient to find a violation of Exchange rules.

(h) *Minor Rule Plan: Options Floor Decorum and Minor Trading Rule Violations*

- (1) Floor Broker failed to use due diligence in the handling or execution of an order. (Rule 6.46(a))
- (2) Floor Broker failed to properly record the time of receipt, change in limit, or increase in size of an order. (Rule 6.67)
- (3) Floor Broker improperly executed a cross transaction. (Rule 6.47 [and OFPA A-6])

- (4) Market Maker or Floor Broker violated procedures concerning the Market Maker's use of a Floor Broker to effect transactions. (Rule 6.48(a) and 6.85)
- (5) Market Maker failed to respond to a call for Market Makers by an Order Book Official. (Rule 6.53)
- (6) Market Maker failed to respond to demands for bids and/or offers. (Rule 6.37)
- (7) OTP Holder [Member] failed to give up the name of the clearing member by public outcry when requesting a quote and size of the market or after effecting a trade. (Rule 6.66)
- (8) OTP Holder [Member] inadvertently placed a non-public order with the Order Book Official. (Rule 6.52(a))
- (9) OTP Holder [Member] failed to remain for a specified amount of time after trade processing. (Rule 6.17)
- (10) OTP Holder [Member] failed to honor a guaranteed market. (Rules 6.82(c)(2) and 6.86)
- (11) OTP Holder [Member] failed to identify broker-dealer order. (Rules 6.66(c) and 6.86(a))
- (12) Improper communication on the floor by use of hand signals or other means. (Rules 6.2, Commentary .02, 6.73 and 6.67)
- (13) OTP Holder or OTP Firm [Member or Member Organization] established or maintained a telephonic or electronic communication between the Floor and another location, or between locations on the Floor, without the prior approval of the Exchange (Rule 11.15 [4.23]).
- (14) Improper vocalization of a trade. (Rules 6.69 and 6.73)
- (15) OTP Holder [Member] violated a standard of conduct or dress on the trading floor. (Rule 6.2)
- (16) Disruptive action while on the trading floor. (Rule 6.2 and 6.64)
- (17) Disruptive action involving physical contact while on the trading floor. (Rule 6.2)

- (18) OTP Holder [Member] failed to act in a professional manner consistent with the requirements of Rule 6.2(c).
- (19) OTP Holder [Member] used abusive language on the trading floor. (Rule 6.2)
- (20) Failure to time stamp an order ticket. (Rule 6.69).
- (21) Position Limit Violation. (Rules 6.8 and 7.6)
- (22) Exercise Limit Violation. (Rules 6.9 and 7.7)
- (23) OTP Holder [Member] acting as Floor Broker and Market Maker trading in excess of 100 contracts per month as a Market Maker. (Rule 6.38(c)).
- (24) Failure to request a market to be removed from the screen when leaving the trading crowd. (Rule 6.37, Com..03; Rule 6.46, Com..04)
- (25) Failure to meet 75% Primary Appointment Requirement. (Rules 6.35, Com..03 and 6.37(h)(5))
- (26) Failure to meet 60% In-Person Trading Requirement. (Rule 6.37(d))
- (27) OTP Holder or an employee of an OTP Firm [Floor Member or Member Firm Employee] violated rules on telephones on the Options Floor. (Rule 6.2(h))
- (28) Failure to comply with obligation to trade or update existing market in response to an order. (Rule 6.37(d))
- (29) Entry of broker/dealer order for execution on Auto-Ex system. (Rule 6.87(a))
- (30) Failure to answer a Trading Crowd/LMM Questionnaire as required. (Rule 6.100 (c))
- (31) Violation of rules on visitors to the Options Floor. (Rule 6.2(e))
- (32) Misuse of OTP Holder badge or OTP Firm identification [Member badge or Member Firm identification]. (Rule 6.2(d))
- (33) Dividing up an order to make its parts eligible for entry into Auto-Ex or PCX Plus. (Rules 6.87(d)(2)[(c)] and 6.90(e)(1)).

(34) Market Maker failed to comply with the Auto-Ex log-off requirement when leaving the trading crowd for more than a brief interval. (Rule 6.87(d)(3))

(35) Abusing Exchange Property (with no property damage). (Rule 6.2)

(36) Abusing Exchange Property (with property damage). (Rule 6.2)

(37) Market Maker failed to select a Primary Appointment Zone prior to the expiration of the Market Maker's 60-day grace period, or thereafter, during any one-month period. (Rule 6.35)

(38) Late reporting of trades without reasonable justification or excuse. (Rule 6.69(a))

(39) Failure to meet 60% quoting requirement. (Rule 6.37(g)(2))

(40) OTP Holder [Member] failed to honor the priority of bids and offers. (Rules 6.75 and 6.76)

(41) Market Maker failed to quote markets within the maximum quote spread differentials or failed to disseminate quotes accurately. (Rules 6.37(b)(1) and 6.82(c)(1))

(42) OTP Holder [Member] traded either before the opening or after the close of market. (Rule 4.2)

(43) Remote Market Maker entered two-sided quotations in options issues that are not included in their primary appointments. (Rule 6.37(h)(5))

(44) OTP Holder [Member] failed to maintain an accurate record of orders. (Rule 6.68)

(i) Reserved.

(j) *Minor Rule Plan: Record Keeping and Other Minor Rule Violations*

(1) Failure to submit trade data to the Exchange in a timely manner. (Rule 10.2(e)(c))

(2) Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule 4.11 [2.12](b)) Failure to file a SIPC form and assessment within five days after OTP Holder's [Member's] receipt of SIPC's final notice will result in formal disciplinary action.

(3) Failure to furnish in a timely manner books, records or other requested information or testimony in connection with all examination of financial responsibility and/or operational conditions. (Rule 4.12 [2.12(c)])

(4) Failure to notify the Exchange of any change of address where notices may be served. (Rule 2.25 [1.13])

(5) Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Exchange. (Rule [2.12] 4.11 (a))

(6) Delaying, impeding or failing, to cooperate in an Exchange investigation. (Rule 10.2(d) [(b)])

(k) *Minor Rule Plan: Recommended Fine Schedule*

	<i>Fines</i>		
	<i>1st</i>	<i>2nd</i>	<i>3rd</i>
<b>(i) Options Floor Decorum and Minor Trading Rule Violations<sup>1</sup></b>	<i>Violation</i>	<i>Violation</i>	<i>Violation</i>
1. Floor Broker failed to use due diligence in the handling or execution of an order. (Rule 6.46(a))	\$1,000.00	\$2,500.00	\$3,500.00
2. Floor Broker failed to properly record the time of receipt, change in limit, or increase in size of an order. (Rule 6.67)	\$500.00	\$1,000.00	\$2,500.00
3. Floor Broker improperly executed a cross transaction. (Rule 6.47 [and OFPA A-6])	\$1,000.00	\$2,500.00	\$3,500.00
4. Market Maker or Floor Broker violated procedures concerning the Market Maker's use of a Floor Broker to effect transactions. (Rule 6.48(a) and 6.85)	\$1,000.00	\$2,500.00	\$3,500.00
5. Market Maker failed to respond to a call for Market Makers by an Order Book Official. (Rule 6.53)	\$2,000.00	\$2,500.00	\$3,500.00
6. Market Maker failed to respond to demands for bids and/or offers. (Rule 6.37)	\$1,000.00	\$2,500.00	\$3,500.00
7. <u>OTP Holder</u> [Member] failed to give up the name of the clearing member by public outcry when requesting a quote and size of the market or after effecting a trade. (Rule 6.66)	\$500.00	\$1,000.00	\$2,500.00
8. <u>OTP Holder</u> [Member] inadvertently placed a non-public order in the book. (Rule 6.52(a))	\$500.00	\$1,000.00	\$2,500.00
9. <u>OTP Holder</u> [Member] failed to remain for a specified amount of time after trade processing. (Rule 6.17)	\$500.00	\$1,000.00	\$2,500.00

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<sup>1</sup> Fines for multiple violations of Options Floor Decorum and Minor Trading Rules are calculated on a running two-year basis.

10. <u>OTP Holder</u> [Member] failed to honor a guaranteed market. (Rules 6.82(c)(2) and 6.86)	\$1,000.00	\$2,500.00	\$3,500.00
11. <u>OTP Holder</u> [Member] failed to identify broker-dealer order. (Rules 6.66(c) and 6.86)	\$500.00	\$1,500.00	\$3,000.00
12. Improper communication on the floor by use of hand signals or other means. (Rules 6.2, Commentary .02, 6.73, and 6.67)	\$1,000.00	\$2,500.00	\$3,500.00
13. <u>OTP Holder or OTP Firm</u> [Member or Member Organization] established or maintained a telephonic or electronic communication between the Floor and another location, or between locations on the Floor, without the prior approval of the Exchange (Rule <u>11.15</u> [4.23]).	\$500.00	\$1,000.00	\$2,500.00
14. Improper vocalization of a trade. (Rules 6.69 and 6.73)	\$1,000.00	\$2,500.00	\$3,500.00
15. <u>OTP Holder</u> [Member] violated a standard of conduct or dress on the trading floor. (Rule 6.2)	\$100.00	\$200.00	\$500.00
16. Disruptive action while on the trading floor. (Rule 6.2 and 6.64)	\$500.00	\$2,000.00	\$3,500.00
17. Disruptive action involving physical contact while on the trading floor. (Rule 6.2)	\$2,000.00	\$4,000.00	\$5,000.00
18. <u>OTP Holder</u> [Member] failed to act in a professional manner consistent with the requirements of Rule 6.2(c)	\$500.00	\$2,000.00	\$3,500.00
19. <u>OTP Holder</u> [Member] used abusive language on the trading floor. (Rule 6.2)	\$500.00	\$2,000.00	\$3,500.00
20. Failure to time stamp an order ticket. (Rule 6.69)	\$500.00	\$1,000.00	\$2,500.00

	<i>No. of Violations</i>	<i>Fine Amount</i>
21. Position limit violation (Rule, 6.8 and 7.6)	1-3	\$2 per contract over 5% of the applicable limit (minimum fine of \$500.00)
	4-6	\$2 per contract over limit (minimum fine of \$1,000.00)
	7+	\$5 per contract over limit (minimum fine of \$1,500.00)
22. Exercise limit violation (Rule, 6.9 and 7.7)	1-3	\$2 per contract over 5% of the applicable limit (minimum fine of \$500.00)
	4-6	\$2 per contract over limit (minimum fine of \$1,000.00)
	7+	\$5 per contract over limit (minimum fine of \$1,500.00)

*Fines*

<i>1st Violation</i>	<i>2nd Violation</i>	<i>3rd Violation</i>
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23. <u>OTP Holder</u> [Member] acting as Floor Broker and Market Maker trading in excess of 100 contracts per month as a Market Maker. (Rule 6.38(c))	\$250.00	\$500.00	\$3,500.00
24. Failure to request a market to be removed from the screen when leaving, the trading crowd. (Rule 6.37, Com. .03; Rule 6.46, Com. .04)	\$500.00	\$1,000.00	\$2,500.00
25. Failure to meet 75% Primary Appointment Requirement. (Rule 6.35, Com. .03 and 6.37(h)(5))	\$500.00	\$1,000.00	\$2,500.00
26. Failure to meet 60% In-Person Trading Requirement. (Rule 6.37(d))	\$500.00	\$1,000.00	\$2,500.00
27. <u>OTP Holder or an employee of an OTP Firm</u> [Floor Member or Member Firm Employee] violated rules on telephones on the Options Floor. (Rule 6.2(h))	\$500.00	\$1,000.00	\$2,500.00
28. Failure to comply with the obligation to trade or update an existing market in response to an order. (Rule 6.37(d))	\$1,000.00	\$2,500.00	\$3,500.00
29. Entry of broker/dealer order for execution on Auto-Ex system. (Rule 6.87(a))	\$1,000.00	\$2,500.00	\$3,500.00
30. Failure to answer a Trading Crowd/LMM Questionnaire as required (Rule 6.100 (c))	\$500.00	\$1,000.00	\$2,500.00
31. Violation of rules on visitors to the Options Floor. (Rule 6.2(e))	\$1,000.00	\$2,500.00	\$3,500.00
32. Misuse of <u>OTP Holder badge or OTP Firm identification</u> [Member badge or Member Firm identification]. (Rule 6.2(d))	\$1,000.00	\$2,500.00	\$3,500.00
33. Dividing up an order to make its parts eligible for entry into Auto-Ex or PCX Plus. (Rules 6.87(d)(2) and 6.90(e)(1)). (Rule 6.87(c))	\$2,500.00	\$3,750.00	\$5,000.00

	<i>No. of Failures in a Twelve-Month Period</i>	<i>Amount of Fine Per Violation</i>
34. Market Maker failed to comply with the Auto-Ex log-off requirement when leaving the trading crowd for more than a brief interval. (Rule 6.87(d)(3))	1-2	\$500
	3-5	\$1,000
	6+	\$1,500
	<i>Fines</i>	
	<i>1st Violation</i>	<i>2nd Violation</i>
35. Abusing Exchange Properly with no property	\$100.00	\$250.00
		<i>3rd Violation</i> \$500.00

damage. (Rule 6.2)			
36. Abusing Exchange Property with property damage (plus repair or replacement costs). (Rule 6.2)	\$500.00	\$750.00	\$1,000.00
37. Market Maker failed to select a Primary Appointment Zone prior to the expiration of the Market Maker’s 60-day grace period, or thereafter, during any one-month period. (Rule 6.35)	\$500.00	\$1,000.00	\$1,500.00
38. Late reporting of trades without reasonable justification or excuse. (Rule 6.69(a))	\$250.00	\$500.00	\$1,000.00
39. Failure to meet 60% Quoting Requirement. (Rule 6.37(g)(2))	\$500.00	\$1,000.00	\$2,500.00
40. <u>OTP Holder</u> [Member] failed to honor the priority of bids and offers. (Rules 6.75 and 6.76)	\$500.00	\$1,000.00	\$2,000.00
41. Market Maker failed to quote markets within the maximum quote spread differentials or failed to disseminate quotes accurately. (Rules 6.37(b)(1) and 6.82(c)(1))	\$500.00	\$1,000.00	\$2,000.00
42. <u>OTP Holder</u> [Member] traded either before the opening of Market or after the close of market. (Rule 4.2)	\$1,000.00	\$2,500.00	\$3,500.00
43. Remote Market Maker entered two-sided quotations in options issues that are not included in their primary appointments. (Rule 6.37(h)(5))	\$500.00	\$1,000.00	\$2,500.00
44. <u>OTP Holder</u> [Member] failed to maintain accurate record of orders. (Rule 6.68)	\$500.00	\$1,000.00	\$2,500.00
(ii) Reserved.			

*Fines*

**(iii) Record Keeping and Other Minor Rule Violations**

	<i>1st</i>	<i>2nd</i>	<i>3rd</i>
	<i>Violation</i>	<i>Violation</i>	<i>Violation</i>
1. Failure to submit trade data to the Exchange in a timely manner (Rule 10.2(c))	\$1,000.00	\$2,500.00	\$3,500.00
2. Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule <u>4.11</u> [2.12](b))	\$1,000.00	\$2,500.00	\$3,500.00
3. Failure to furnish in a timely manner books, records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. (Rule <u>4.12</u> [2.12(c)])	\$2,000.00	\$4,000.00	\$5,000.00
4. Failure to notify the Exchange of a change of address where notices may be served. (Rule <u>2.25</u> [1.13])	\$500.00	\$1,000.00	\$2,500.00
5. Failure to file a financial report or financial information in the type, form, manner and time	\$2,000.00	\$4,000.00	\$5,000.00

prescribed by the Exchange. (Rule 4.11 [2.12](a))  
6. Delaying, impeding or failing to cooperate in an  
Exchange investigation. (Rule 10.2(b))

\$3,500.00      \$4,000.00      \$5,000.00

### Summary Sanction Procedure

Rule 10.13 [10.14](a). In lieu of commencing a "disciplinary action," as that term is used in Rule 10.4[10.3], the Exchange may summarily sanction any OTP Holder, OTP Firm, [member, member organization] or [person] associated person with an OTP Firm [member or member organization] subject to the requirements set forth herein. In issuing a summary sanction, Exchange staff or two Trading [Floor] Officials shall:

- (1) Issue a floor citation and apprise the person cited of the alleged violation;
- (2) Notify the Exchange Regulatory Staff [Compliance Department] of the alleged violation, and request information regarding prior similar violations during the previous twelve months by the individual cited;
- (3) Indicate on the citation the amount of the fine to be imposed;
- (4) Ask the parson cited to indicate by their [his] signature on the citation that he or she acknowledges receipt of the citation;
- (5) Give the top copy of the citation to the person alleged to have committed the violation; and
- (6) Give the remaining copies of the citation to the Order Book Official or other designated staff person, who will then forward such copies to the Exchange Regulatory Staff [Surveillance Department] for processing.

(b) Except as provided in subsection (c), the violations for which this summary sanction procedure may be used are the following:

- (1) OTP Holder [Member] violated a standard of conduct or dress on the trading floor. (Rule 6.2)
- (2) Disruptive action while on the trading floor. (Rule 6.2 [and OFPA A-1])
- (3) Disruptive action involving physical contact while on the trading floor. (Rule 6.2)
- (4) OTP Holder [Member] failed to act in a professional manner consistent with the requirements of Rule 6.2.

(5) OTP Holder [Member] used abusive language on the trading floor.  
(Rule 6.2)

(c) If Exchange Staff or two Trading [Floor] Officials do not become aware of a violation until the Exchange Regulatory Staff [Surveillance Department] has discovered the violation and notified such Exchange Staff or Trading [Floor] Official, a summary sanction may, for the violations stated below, be imposed by such Trading [Floor] Officials at the time they are so notified. The Trading [Floor] Officials will then be responsible for issuing a floor citation. The violations for which this subsection shall apply are the following:

(1) Failure to time stamp an order ticket. (Rule 6.69 [and OFPA G-12]).

(2) OTP Holder [Member] inadvertently placed a non-public order with an Order Book Official. (Rule 6.52(a))

(d) Any OTP Holder, OTP Firm, [member, member organization] or [person] associated person with an OTP Firm [member or member organization, who has been] sanctioned pursuant to this procedure may appeal such sanction pursuant to Rule 10.11.

### **Hearings and Review of Decisions by the Exchange**

Rule 10.14(a). General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Exchange to apply for an opportunity to be heard and to have the action reviewed. These actions are:

(1) the denial of an OTP;

(2) the barring of any person from becoming associated with an OTP Firm;

(3) the suspension or cancellation of OTP trading privileges;

(4) the prohibition or limitation with respect to access to services provided by the Exchange, or the access to services of any OTP Firm taken pursuant to the Bylaws, or Rules or procedures of the Exchange;

(5) actions taken pursuant to Rules 6.37, 6.82(f) and 6.82(g); or

(6) the denial of an applicant for registration as a Market Maker, Lead Market Maker, or Floor Broker (Rules 6.33, 6.44 and 6.82(b)(1)).

The provisions of this Rule shall not apply to reviews of the following:

(A) disciplinary action, for which review is already provided within Rule 10; and

(B) actions in Arbitration.

For purposes of this Section, a person must be "aggrieved" in an economic sense.

(b) *Submission of Application.* A person who is aggrieved by any action of the Exchange within the scope of this Rule and who desires an opportunity to be heard shall file a written application with the Secretary of the Exchange within thirty (30) calendar days after such action has been taken. The application shall state the action complained of and the specific reasons why the applicant takes exception to such action and the relief sought. In addition, if the applicant intends to submit any additional documents, statements, arguments, or other material in support of the application, the same should be so stated and identified.

(c) *Extension of Time.* An application not filed within the time specified in Rule 10.14(b) shall not be considered by the Board Appeals Committee, unless an extension of time is allowed by the Board Appeals Committee upon a showing of good cause. In order to obtain an extension of time within which to file an appeal, the applicant must, within the time specified in Rule 10.14(b) file with the Secretary of the Exchange a request for an extension of time within which to submit the application. The request for extension will be ruled upon by the Board Appeals Committee, whose ruling will be given in writing. Rulings on requests for extension of time are not subject to appeal under Rule 10.

(d). *Request for a Stay of Committee Action* (1) An aggrieved person seeking review of a committee decision may request a stay of the decision pending a hearing and review by the Board Appeals Committee. The request for a stay must include a \$500 stay fee along with a concise statement of the basis for the stay that must be separate from, and in addition to, a statement of the basis for the review of the complained of action. Applicants seeking a stay must file the request with the Office of the Corporate Secretary by the earlier of ten (10) business days after the committee renders its decision or forty-eight (48) hours before the committee implements action. The Exchange will not be required to consider a request for a stay that is made within the 48 hours before a committee implements action.

(2) A stay of a committee action may be granted in only those cases where the aggrieved person has made a showing, based solely on the evidence and information presented in the application for a stay, that: (A) there is a likelihood the applicant will prevail on the merits on review; (B) without a stay, the applicant is likely to suffer irreparable injury; (C) it is likely that there will not be substantial harm to other parties if a stay is granted; and (D) the issuance of a stay is likely to serve the interests of the Exchange or an identified public interest.

(3) The Chair of the Board Appeals Committee will designate a single Board Appeals Committee member to rule on a request for a stay. The designated Board of Appeals Committee member may summarily render a decision on the request for a stay based solely on the documents submitted in support of, and in opposition to, the request for a stay. In evaluating the merits of a stay application, the Committee member will only consider matters relevant to the issuance of the stay, not the underlying complaint. The decision of the Committee member whether to grant a stay may not be appealed under Rule 10.

(e) Panel. Applications for hearing or review shall be referred by the Secretary to the Board Appeals Committee which shall, if requested, appoint an Appeals Panel of no less than three persons. A record of the proceedings shall be kept.

(f) Documents. The Appeals Panel will set a hearing date and shall be furnished with all materials relevant to the proceeding at least seventy-two (72) hours prior to the hearing. Each party shall have the right to inspect and copy the other party's materials prior to the hearing or review.

(g) Notice. Parties to the proceeding shall be informed by the Secretary of the composition of the Appeals Panel at least seventy-two (72) hours prior to the scheduled hearing or review.

(h) Participants. The parties to the hearing shall consist of the applicant and a representative of the Exchange who shall present the reasons for the action taken by the Exchange. In addition, any other person may intervene as a party in the hearing when that person claims an interest in the transaction that is the subject of the action. An intervening party must be so situated that the disposition of the action may, as a practical matter, impair or impede that person's ability to protect that interest unless it is adequately represented by existing parties. Also, the Appeals Panel may, in its discretion, permit a person to intervene in the action as a party when that person's claim or defense and the main action have questions of law and fact in common. The applicant is entitled to be represented by counsel at all stages of the proceeding.

(i) Procedure for Intervention. The person seeking intervention shall serve a motion to intervene on the Secretary which will be transmitted to the Appeals Panel. The motion shall state the grounds therefor and shall set forth the claim or defense upon which the intervention is sought. The Appeals Panel, in its discretion, shall consider whether the intervention will unduly delay or prejudice the adjudication or the rights of the original parties.

(j) Conduct of Hearing. The Appeals Panel shall determine all questions concerning the admissibility of evidence and shall regulate the conduct of the hearing. Each of the parties shall be permitted to make an opening statement, present witnesses and documentary evidence, cross-examine opposing witnesses and present closing

arguments, orally or in writing as determined by the Appeals Panel. The Appeals Panel shall also have the right to question all parties and witnesses to the proceeding and a record shall be kept. Formal rules of evidence shall not apply. The standard of review shall be de novo.

(k) *Decision.* The Appeals Panel’s decision shall be in writing and contain the reasons supporting the conclusions of the Appeals Panel.

(l) *Petition.* The decision of the Appeals Panel shall be subject to review by the Board of Directors either on its own motion within thirty (30) calendar days after issuance, or upon written request submitted by the applicant, or by the Chief Executive Officer of the Exchange, within fifteen (15) calendar days after issuance of the decision. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with the reasons for such exceptions. Only written exceptions shall be considered. The Board of Directors shall have sole discretion to allow oral argument.

(m) *Conduct of Review.* The decision of the Panel of the Board Appeals Committee shall be subject to review by the Board either on its own motion within thirty days after issuance, upon written request submitted by the applicant, by the Chief Executive Officer of the Exchange, or by the Chairman of the committee whose action was subject to the prior review, within fifteen days after issuance of the decision. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with the reasons for such exceptions. Only written exceptions shall be considered. The Board, or committee of the Board, shall have sole discretion to allow oral argument.

(n) *Service of Notice.* Any charges, notices or other documents may be served upon the applicant either personally or by leaving the same at applicant’s place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the applicant at his or her address as it appears on the books and records of the Exchange.

(o) *Extension of Time.* Any time limits imposed under this Rule for the submission of answers, petition or other materials may be extended by permission of the Secretary of the Exchange. All papers and documents relating to review by the Board Appeals Committee or the Board of Directors must be submitted to the Secretary of the Exchange.

### **Miscellaneous Provisions**<sup>2</sup>

Rule 10.15 (a). Any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at Respondent’s place of business or

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<sup>2</sup> Former Rule 10.10 is being renumbered as new Rule 10.15.

by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at his address as it appears on the books and records of the Exchange.

(b) Unless otherwise stated, any time limits imposed under Rule 10 for the submission of answers, petitions or other materials may be extended only by the prior written approval of the Exchange.

(c) The procedures set forth in Rule 10.4 and 10.8 shall not apply in cases where Floor Citations are issued for violations of Rules, policies or procedures adopted by the Exchange and the fine or fines imposed are five hundred dollars (\$500.00) or less. (Reference is made to Rule 10.11 for review procedures which apply to Floor Citations.)

(d) The Board of Directors may designate any Standing or Special Committee of the Exchange as the Conduct Panel in any given proceeding or type of proceeding.

### **Pacific Exchange Sanctioning Guidelines**

#### Rule 10.16 [10.15] (a) Overview

The mission of the Pacific Exchange, Inc. ("PCX" or "Exchange") is to provide a securities marketplace in which high standards of honor and integrity prevail and to promote and maintain just and equitable principles of trade and business. To this end, as a regulator, the PCX seeks to protect investors and strengthen market integrity through vigorous, even-handed, and cost-effective self-regulation. The PCX embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. To build public confidence in the financial markets, and as part of the PCX's regulatory mission, the PCX must stand ready to discipline OTP Holders, OTP Firms [members, member organizations], their employees, and approved persons by imposing sanctions when necessary and appropriate to protect investors, OTP Holders, OTP Firms [members, member organizations] and the marketplace as a whole and to promote the public interest.

These Sanctioning Guidelines have been developed for use by the various Exchange bodies that adjudicate disciplinary actions, including the PCX Board of Directors [Governors], the Ethics and Business Conduct Committee, Exchange Regulatory Staff [the PCX's Surveillance and Enforcement Departments], for in-house adjudications, (collectively, "Adjudicatory Bodies" or "Adjudicators"), in determining appropriate remedial sanctions. These Guidelines also may be used by parties to a disciplinary action in entering into a Stipulation of Facts and Consent to Penalty.

These Guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicatory Bodies to assist them in imposing sanctions consistently and fairly. The Guidelines recommend ranges for sanctions and suggest factors (called "Principal Considerations") that Adjudicatory Bodies may

consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These Guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicatory Bodies may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these Guidelines.

To promote consistency and uniformity in the imposition of penalties, the following General Principles should be considered in connection with the imposition of sanctions in all cases. In addition, a list of Principal Considerations in Determining Sanctions, which enumerates generic factors that could be aggravating or mitigating in any given case, is included.

(b) General Principles Applicable to All Sanction Determinations.

(1) Disciplinary sanctions are remedial in nature. Adjudicatory Bodies should design sanctions to prevent and deter future misconduct by the wrongdoer, to discourage others from engaging in similar misconduct, and to improve overall business and ethical standards of PCX members. The concept of remediation calls for the imposition of the least burdensome sanction necessary effectively to address the misconduct. The concept of deterrence requires the imposition of a remedial sanction of sufficient weight to discourage the violator and others similarly situated from repeating or engaging in the misconduct. Disciplinary sanctions should not be designed to punish for past misconduct. Rather, Adjudicatory Bodies should seek to achieve remediation and deterrence in imposing sanctions.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. Repeated acts of misconduct call for increasingly serious sanctions. It should be noted, however, that even if a named party has no history of misconduct, the misconduct at issue may be so egregious as to justify sanctions beyond the range recommended in these Guidelines. Adjudicatory Bodies should consider a named party's relevant disciplinary history in determining sanctions. Relevant history may include past misconduct similar to the misconduct at issue or past misconduct that, while unrelated, evidences prior disregard for regulatory requirements, investor protection, or the integrity of the industry as a whole. Certain regulatory incidents are not relevant to the determination of disciplinary sanctions. Examples are: settlements containing an express agreement prohibiting consideration of the action for purposes of enhancement of sanctions in subsequent actions; arbitration proceedings, whether pending, settled or fully litigated; and pending regulatory investigations or the existence of ongoing regulatory proceedings prior to the issuance of a decision.

(3) Adjudicatory Bodies should tailor sanctions to address the misconduct at issue. In order to achieve remediation, Adjudicatory Bodies should impose sanctions tailored to the misconduct at issue. While adhering to the limitations with respect to sanctions imposed by the Securities Exchange Act of 1934 and the PCX's own rules, Adjudicatory Bodies may consider imposing somewhat unique sanctions if necessary to address the specific misconduct at issue. For example, an Adjudicatory Body may require an OTP Holder or OTP Firm [member or member organization] to: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; or implement heightened supervision of certain employees.

(4) Aggregation or "batching" of violations may be appropriate in certain instances for purposes of determining sanctions. Adjudicatory Bodies may treat several acts of misconduct as one "violation" for purposes of determining sanctions if the misconduct meets certain objective parameters. The parameters are intended to describe the circumstances in which Adjudicatory Bodies may choose to aggregate violations and are not intended to require that Adjudicators aggregate multiple violations in every instance in which the violations meet the parameters. Multiple violations may be treated individually such that a sanction is imposed for each violation, and multiple violations may be treated as aggravating and warrant higher sanctions. In determining whether to aggregate, Adjudicatory Bodies should consider the following factors:

(A) Whether the violations involved related activity and the same or similar interrelated rules or regulations. (If aggregated, the violations should not have involved materially different types of misconduct.)

(B) Whether the violations involved unintentional or negligent misconduct or manipulative, fraudulent, or deceptive intent. (If aggregated, the violations should not have involved manipulative, fraudulent, or deceptive intent.)

(C) Whether the misconduct resulted in injury to investors. (If investors were injured, but the misconduct did not involve manipulative, fraudulent, or deceptive intent and full restitution has been paid to all injured parties, an Adjudicatory Body may consider aggregating violations. Otherwise, violations involving customer harm should not be aggregated.)

(D) Whether the violations resulted from a single systematic problem or underlying cause that has been corrected. (If aggregated, the violations should have resulted from one cause and the cause should have been corrected.)

(5) Adjudicatory Bodies should order restitution if necessary to remediate misconduct. Adjudicatory Bodies should order restitution when an identifiable party has suffered a quantifiable loss as a result of a named party's misconduct. Restitution is particularly appropriate when a named party has benefited from the misconduct. Furthermore, while restitution is an appropriate method of depriving a wrongdoer of ill-gotten gain, as discussed in the sixth principle, the amount of ill-gotten gain also may be used to determine the amount of a disciplinary fine. Adjudicatory Bodies should calculate orders of restitution based on the actual amount of loss sustained by the injured party, as demonstrated by record evidence. Orders of restitution may exceed the amount of the named party's ill-gotten gain. It is imperative that Adjudicatory Bodies include in written decisions a description of the method used to calculate restitution.

(6) Adjudicatory Bodies may consider the amount of a named party's ill-gotten gain when determining the amount of a disciplinary fine. In cases in which the record demonstrates that a named party obtained a financial benefit from its misconduct, Adjudicatory Bodies may require disgorgement of the ill-gotten gain by fining away the amount of the financial benefit.

(7) Adjudicatory bodies may require approved persons and other registered employees of OTP Holders or OTP Firms [members or member organizations] to requalify in any or all registered capacities or to obtain additional training before continuing as floor officials. The remedial purpose of disciplinary sanctions may be served best by requiring a named party who is a registered employee of an OTP Holder or OTP Firm [member or member organization] to requalify by examination as a condition of continued employment in the securities industry. Similarly, it may be appropriate to require a named party to receive additional training before allowing the party to continue to act as a floor official. These types of sanctions are particularly appropriate in cases in which a named party's actions demonstrate a lack of knowledge or familiarity with the rules and laws governing the securities industry.

(8) Adjudicatory Bodies may consider a named party's inability to pay in connection with the imposition of monetary sanctions when the party raises this issue. When raised by a named party, Adjudicatory Bodies may consider a proven bona fide inability to pay when determining monetary sanctions. The burden is on the named party to raise the issue of inability to pay and to provide evidence of inability. Proof of inability to pay need not result in a reduction or waiver of monetary sanctions, but could instead result in the imposition of an alternate payment option or alternate sanction.

(c) These General Principles are applicable to all sanctions determinations and should be considered by Adjudicatory Bodies in all cases. Consistency and uniformity are important in the application of disciplinary sanctions and, for this reason, these guiding

principles are extremely important to the continued fairness of the PCX disciplinary process.

(d) **Principal Considerations In Determining Sanctions.** The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list other factors. As appropriate, Adjudicatory Bodies should consider case-specific factors in addition to those listed here and in individual guidelines.

(1) The named party's relevant disciplinary history. (See General Principle No. 2).

(2) Whether the named party accepted responsibility for and acknowledged the misconduct to an employer (in the case of an employee of a member or member organization or an approved person) or a regulator prior to detection and intervention by the employer or regulator.

(3) Whether the named party voluntarily employed subsequent corrective measures, prior to detection or intervention by an employer (in the case of an employee of an OTP Holder or OTP Firm [member or member organization] or an approved person) or a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.

(4) Whether the named party voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.

(5) Whether the named party demonstrated reasonable reliance on competent legal, compliance, or accounting advice.

(6) Whether the named party engaged in numerous acts and/or a pattern of misconduct.

(7) Whether the named party engaged in the misconduct over an extended period of time.

(8) Whether the named party attempted to conceal misconduct or to lull into inactivity, mislead, deceive, or intimidate a customer, regulatory authorities, or an employer (in the case of an employee of an OTP Holder or OTP Firm [member or member organization] or an approved person).

(9) With respect to other parties, including the investing public and/or other market participants, (a) whether the named party's misconduct resulted directly or indirectly in injury to such other parties; and (b) the extent of the injury.

(10) Whether the named party provided substantial assistance to regulators in its examination and/or investigation of the underlying misconduct, or whether the named party attempted to delay an investigation, to conceal information, or to provide inaccurate or misleading testimony or documentary information to the PCX or another regulator.

(11) Whether the named party's misconduct was the result of an intentional act, recklessness, or negligence.

(12) Whether the named party engaged in the misconduct at issue notwithstanding prior warnings from PCX staff, another regulator, or a supervisor (in the case of an approved person or employee of an OTP Holder or OTP Firm [member or member organization]) that the conduct violated PCX rules or applicable securities laws or regulations.

(13) Whether the named party's misconduct resulted in the potential for monetary or other gain.

(14) The number, size, and character of the transactions at issue.

(15) The level of sophistication of the injured or affected customer.

(16) Whether, at the time of the violation, the named OTP Holder or OTP Firm [member or member organization] had developed reasonable supervisory, operational, and/or technical procedures or controls that were properly implemented.

(17) Whether, at the time of the violation, the named OTP Holder or OTP Firm [member or member organization] had developed adequate training and educational initiatives.

(18) Whether the named OTP Holder or OTP Firm [member or member organization] can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of its historical compliance record.

(19) Whether the OTP Holder or OTP Firm [member or member organization] with which a named party is/was associated disciplined the party for the misconduct at issue prior to regulatory detection.

(e) Specific Sanctioning Guidelines for Options Order Handling Rules.

(1) Firm Quotes--PCX Rule 6.86

(A) Principal Considerations in Determining Sanctions.

(i) See list of principal considerations applicable to all violations.

(ii) Whether named party remediated the failures to execute.

(B) Monetary Sanctions.

(i) First Disciplinary Action Fine of \$500 to \$5,000.

(ii) Second Disciplinary Action Fine of \$1,000 to \$10,000.

(iii) Subsequent Disciplinary Actions Fine of \$3,000 to \$50,000.

*Commentary:*

**.01** To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(C) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years.

(2) Limit Order Display--PCX Rule 6.55<sup>1</sup>

(A) Principal Considerations in Determining Sanctions.

(i) See list of principal considerations applicable to all violations.

(ii) Whether customer limit order was executed during the period of non-compliance.

(iii) Whether other transactions were executed at prices equal to or better than the customer limit order.

(iv) Whether misconduct had a significant adverse impact on market transparency and availability of price information.

(v) Amount of time beyond 30 seconds that elapsed before limit order was displayed.

(B) Monetary Sanctions.

(i) First Disciplinary Action Fine of \$1,000 to \$5,000.

(ii) Second Disciplinary Action Fine of \$2,000 to \$10,000.

(iii) Subsequent Disciplinary Actions Fine of \$5,000 to \$50,000.

*Commentary:*

**.01** To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(C) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct, consider expelling the OTP Holder or OTP Firm [member or member organization], withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm [member or member organization].

(3) Priority Rules and Obligations of Market Makers--PCX Rules 6.37 and 6.75.

(A) Principal Considerations in Determining Sanctions.

(i) See list of principal considerations applicable to all violations.

(ii) Whether the misconduct involved violations of rules intended to provide protection to customer orders.

(iii) Whether misconduct resulted in the failure to execute a customer order and, if so, whether the named party remediated the misconduct.

(B) Monetary Sanctions.

(i) First Disciplinary Action Fine of \$1,000 to \$5,000.

(ii) Second Disciplinary Action Fine of \$2,000 to \$20,000.

(iii) Subsequent Disciplinary Actions Fine of \$5,000 to \$50,000.

*Commentary:*

**.01** To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(C) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct and/or customer harm, consider expelling the OTP Holder or OTP Firm [member or member organization], withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm [member or member organization].

(4) Best Execution-PCX Rule 6.46.

(A) Principal Considerations in Determining Sanctions.

(i) See list of principal considerations applicable to all violations.

(ii) Whether the misconduct involved violations of rules intended to provide protection to customer orders.

(iii) Whether a customer was disadvantaged because of the Floor Broker's failure to exercise due diligence.

(iv) Whether the misconduct resulted in the failure to execute a customer order, if so, whether the wrongdoer remediated the misconduct.

(v) Whether the wrongdoer acted with intent to disadvantage a customer.

(B) Monetary Sanctions.

(i) First Disciplinary Action Fine of \$1,000 to \$5,000.

(ii) Second Disciplinary Action Fine of \$3,000 to \$10,000.

(iii) Subsequent Disciplinary Actions Fine of \$10,000 to \$25,000.

*Commentary:*

**.01** To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(C) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern

of misconduct and/or customer harm, consider expelling the OTP Holder or OTP Firm [member or member organization], withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm [member or member organization].

(5) Trade Reporting--PCX Rule 6.69.

(A) Principal Considerations in Determining Sanctions.

- (i) See list of principal considerations applicable to all violations.
- (ii) The extent of the abuse i.e. whether a pattern of abuse exists, and the number of transactions involved.
- (iii) Presence of intent, recklessness, or negligence.
- (iv) The nature of trade-reporting violation.
- (v) Whether the violative conduct affected discovery of information regarding market price.
- (vi) The amount of time beyond 90 seconds that elapsed before trade was reported.
- (vii) Whether the wrongdoer remediated the misconduct.

(B) Monetary Sanctions.

- (i) First Disciplinary Action Fine of \$1,000 to \$5,000.
- (ii) Second Disciplinary Action Fine of \$3,000 to \$10,000.
- (iii) Subsequent Disciplinary Actions Fine of \$10,000 to \$50,000.

*Commentary:*

**.01** To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(C) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct and/or customer harm, consider expelling the OTP Holder or OTP

Firm [member or member organization], withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm [member or member organization].

**Approved:** March 15, 2002 (PCX-01-23).]

<sup>1</sup> The Exchange's "Limit Order Display Rule" for options currently is pending approval at the SEC.