

## **Rule 12 Arbitration**

### **Matters Subject to Arbitration**

Rule 12.1(a). Any dispute, claim or controversy between parties who are OTP Firms, OTP Holders, [members, member organizations] or associated persons arising in connection with the securities business of such parties shall, at the request of any such party, be submitted for arbitration in accordance with this Rule.

(b) Any claim which is related to employment, including any sexual harassment or any discrimination claim in violation of a statute, will be eligible for submission to arbitration under this Rule only where all parties have agreed to arbitrate the claim after it has arisen.

(c) Any dispute, claim or controversy between a customer or non-[member] OTP Holder and an OTP Firm, OTP Holder [member, member organization] and/or associated person arising in connection with the securities business of such OTP Firm, OTP Holder [member, member organization] and/or associated person shall be arbitrated under this Rule as provided by any duly executed and enforceable written document or upon the request of the customer or non-[member] OTP Holder.

(d) Claims which arise out of transactions in a readily identifiable market may, with the consent of the claimant, be referred to the arbitration.

#### **(e) Class Action Claims**

(1) [(i)] A claim submitted as a class action shall not be eligible for arbitration under this Rule at the Exchange.

(2) [(ii)] Any claim filed by an OTP Firm or OTP Holder [member or members] of a putative or certified class action is also ineligible for arbitration at the Exchange if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non self-regulatory organization arbitration forum for class-wide arbitration. However, such claims shall be eligible for arbitration in accordance with this Rule or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrator(s) in accordance with Rule 12.2 or Rule 12.8, as applicable.

Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten (10) business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrator(s).

(3) [(iii)] No OTP Firm, OTP Holder [member, allied member, member organization] and/or associated person shall seek to enforce any agreement to arbitrate against a customer that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: [(a)] (A) the class certification is denied; [(b)] (B) the class is decertified; [(c)] (C) the customer is excluded from the class by the court; or [(d)] (D) the customer elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(4) [(iv)] No OTP Firm, OTP Holder [member, allied member, member organization] and/or associated person shall be deemed to have waived any of its rights under this Rule or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.

(f) The Arbitration provisions of this Rule shall not constitute a prospective waiver of any right of action that may arise under the federal securities laws.

(g) Under this Rule, the Exchange shall have the right to decline the use of its arbitration facilities in any dispute, claim or controversy, where having due regard for the purposes of the Exchange, and the intent of this Rule, such dispute, claim or controversy is not a proper subject matter for arbitration.

*[Commentary:]*

(h) [.01] For purposes of this Rule, the terms OTP Firm, OTP Holder [member, member, member organization] associated person and an employee of an OTP Firm or OTP Holder [member], shall be deemed to encompass those persons who were Exchange OTP Firms or OTP Holders [members] at the time the circumstances occurred which gave rise to the controversy.

(i) [.02] It may be deemed conduct inconsistent with just and equitable principles of trade for an OTP Firm or OTP Holder [member, a member organization] or a person associated with an OTP Firm or OTP Holder [member, or member organization] to:

[(a)](1) fail to submit to arbitration on demand under the provisions of this Rule;

[(b)](2) fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if the OTP Holder [member], OTP Firm [member organization] or person associated with an OTP Holder or OTP Firm [member or member organization] is a party to an arbitration filed pursuant to Rule 12;

[(c)](3) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"), if the OTP Holder [member], OTP Firm [member organization] or person associated with an OTP Holder or OTP Firm [member or member organization] is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among OTP Holders [members], OTP Firms [member organizations] and/or persons associated with an OTP Holder or OTP Firm [member or member organization] that do not involve consumer-related or employment-related claims);

[(d)](4) to fail to appear or to provide any document in his or its possession or control as directed pursuant to the provisions of this Rule; or

[(e)](5) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(j) [.03] Where an arbitration proceeding pursuant to this Rule discloses any violation of the Exchange [Constitution] Bylaws or Rules of the Board of [Governors] Directors, the Exchange may take such disciplinary action as it deems appropriate.

[Amended: April 30, 1999; November 21, 2002 (PCX-2002-71); April, 23, 2003 (PCX-2003-13).]

### **Simplified Arbitration for Public Customers**

Rule 12.2(a). Any dispute, claim or controversy, arising between a public customer(s) and an OTP Holder or OTP Firm and/or person(s) associated with an OTP Holder or OTP Firm [member, or member organization], required to be arbitrated under the Bylaws and Rules of the [Pacific] Exchange, [Inc.,] involving a dollar amount not exceeding \$10,000, exclusive of attendant costs and interest, shall upon demand of the customer(s) or by written consent of the parties be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute, and the required deposit, together with documents in support of the claim. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party

and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

(c) The Claimant shall pay a filing fee and remit a hearing deposit as specified in Rule 12.31 upon filing of the Submission Agreement. The final disposition of the sum shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If Respondent(s) has interposed a Third Party Claim, the Respondent(s) shall serve the Third Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third Party Claim and a copy of the original Claim filed by the Claimant. A copy of the Third Party Claim shall be filed with the Director of Arbitration with sufficient copies for the arbitrator(s). The Third Party Respondent shall respond in the manner herein provided for response to the claim. If the Respondent(s) files a related Counterclaim exceeding \$10,000.00, the Arbitrator may refer the Claim, Counterclaim and/or Third Party Claim, if any, to a panel of three (3) or five (5) arbitrators in accordance with Rule 12.8 of this Rule, or he may dismiss the Counterclaim and/or Third Party Claim, without prejudice to the Counter-claimant(s) and/or Third Party Claimant(s) pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The cost to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 12.31.

(e) All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient copies for the arbitrator(s), a copy of the Answer, Counterclaim, Third Party Claim, amended claim or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either [(i)] (1) serve a Reply to the counterclaim on each party and on the Director of Arbitration with sufficient additional copies for the arbitrator(s), or [(ii)] (2) if the amount of the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings will be discontinued without prejudice to the rights of the parties.

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator(s) calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the

pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h) Document Production and Information Exchange in Simplified Proceedings

(1) [(i)] The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(2) [(ii)] If a hearing is demanded or consented to, in accordance with Rule 12, the General Provisions Governing Pre-Hearing Proceedings under Rule 12.14 shall apply.

(3) [(iii)] If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall simultaneously serve its requests for document production on all parties. Any response or objection to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The selected arbitrator shall resolve all requests under this paragraph on the papers submitted.

(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to a panel which shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(k) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

(l) Except as otherwise provided herein, the general arbitration rules of the [Pacific] Exchange, [Inc.] shall be applicable to proceedings instituted under this Rule.

[Amended: June 21, 1991; July 30, 1993.]

**Hearing Requirements-Waiver of Hearing**

Rule 12.3(a). Any dispute, claim or controversy, except as provided in Rule 12.2 (Simplified Arbitration for Public Customers), shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

### **Time Limitation Upon Submission**

Rule 12.4. No dispute, claim or controversy shall be eligible for submission to arbitration under this Rule in any instance where six (6) years shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

### **Dismissal of Proceedings**

Rule 12.5. At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceedings and refer the parties to the remedies provided by law. The arbitrators shall upon the joint request of the parties dismiss the proceedings.

### **Settlements**

Rule 12.6. All settlements upon any matter submitted shall be at the election of the parties.

### **Tolling of Time Limitation(s) for the Institution of Legal Proceedings**

Rule 12.7(a). Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceeding, shall be tolled when a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Exchange shall retain jurisdiction upon the matter submitted.

(b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.

### **Designation of Number of Arbitrators**

Rule 12.8(a). Public Controversies. (1) Except as otherwise provided in this Rule, in all arbitration matters involving public customers and where the matter in controversy does not exceed \$30,000, the Director of Arbitration shall appoint a single public arbitrator who is knowledgeable in, but who is not from the securities industry, to decide the dispute, claim or controversy. Upon the request of a party in its initial filing or at the request of the arbitrator, the Director of Arbitration shall appoint an arbitration panel

which shall consist of three (3) or five (5) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(b) In arbitration matters involving public customers and where the amount in controversy exceeds \$30,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which consist of no fewer than three (3) arbitrators, nor more than five (5), at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(c) An arbitrator will be deemed as being from the securities industry if he or she:

1. is a person associated with an OTP Firm, OTP Holder [member], or broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor, or

2. has been associated with any of the above within the past three (3) years, or

3. is retired from any of the above, or

4. is an attorney, accountant or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

(d) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer or investment advisor.

(e) OTP Firm and OTP Holder [Member] Controversies. (1) In all arbitration matters not involving public customers and where the matter in controversy involves an amount that is \$30,000 or less (exclusive of interest and costs), the Director of Arbitration will appoint an arbitration panel composed of one securities industry arbitrator unless the parties request and mutually agree to the appointment of a public arbitrator. If the amount involved in the controversy exceeds \$30,000 (exclusive of interest and costs), the Director of Arbitration will appoint an arbitration panel composed of three or five arbitrators from the securities industry unless the parties request and mutually agree to a different panel composition. Members of the arbitration panel will not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard.

*[Commentary:]*

(f) [.01] Pursuant to this Rule, arbitrations shall be held [either] in [Los Angeles or ]San Francisco or such alternate situs mutually acceptable to the parties to the controversy and the Exchange. Where the parties have requested an alternate situs, the Exchange may either establish arbitration facilities outside the [Los Angeles and] San Francisco areas or refer the arbitration proceeding to another self-regulatory organization. In the event that another self-regulatory organization conducts the arbitration, such organization shall follow the procedures contained in this Rule.

(g) [(f)] Composition of Panels. The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the Chairman of each panel.

[**Amended:** September 5, 2002 (PCX-2002-33).]

### **Notice of Selection of Arbitrators**

Rule 12.9. The Director of Arbitration shall inform the parties of the arbitrators' names and employment histories for the past ten (10) years, as well as information disclosed pursuant to Section 11 of this Rule at least eight (8) business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that any arbitrator after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill any vacancy. The Director of Arbitration shall inform the parties of the name and employment history of the arbitrator for the past ten (10) years, as well as information disclosed pursuant to Section 11, as soon as possible. A party may make further inquiry of the Director of Arbitration concerning the background of the replacement arbitrator and, within the time remaining prior to the first hearing session, or the five (5) day period provided under Section 10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided under Section 10.

### **Peremptory Challenge**

Rule 12.10. In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge and the Third Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.

### **Disclosures Required of Arbitrators**

Rule 12.11(a). Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose: (1) Any direct or indirect financial or personal interest in the outcome of the arbitration; (2) Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners, or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in subsection (a) above.

(c) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in subsection (a) hereof is a continuing duty that requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(d) Prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section, if the arbitrator who disclosed the information is not removed.

### **Disqualification or Other Disability of Arbitrators**

Rule 12.12. In the event that any arbitrator, after the commencement of the first hearing session but prior to the rendition of the award should become disqualified, resign, die, withdraw or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten (10) years, as well as information disclosed pursuant to Section 11. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Section 10,

whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 10.

### **Initiation of Proceedings**

Rule 12.13. Except as otherwise provided herein, an arbitration proceeding under this Rule shall be instituted as follows:

(a) **Statement of Claim.** The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a Statement of Claim of the controversy in dispute, together with the documents in support of the claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim should specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) **Answer-Defenses, Counterclaims and/or Cross-Claims.**

(1) Within twenty (20) business days from receipt of the Statement of Claim, the Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent(s) Answer. An executed Submission Agreement and Answer of the Respondent(s) shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. The Answer shall specify all available defenses and relevant facts that will be relied upon at the hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third Party Claim against any other party or person based upon any existing dispute, claim or controversy subject to arbitration under this Rule.

(2)(i) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third Party Respondent who pleads only a general denial as an Answer may, upon objection by a party in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(ii) A Respondent, Responding Claimant, Cross-Claimant or, Cross-Respondent, Third Party Respondent who fails to specify all available defenses and relevant facts in such party's Answer, may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting the facts or defenses not included in such party's Answer at the hearing.

(iii) A Respondent, Responding Claimant, Cross-Claimant or, Cross-Respondent, Third Party Respondent who fails to file an Answer within twenty (20) business days from receipt of service of a Statement of Claim, unless the time to answer has been extended pursuant to paragraph five (5), below, may, in the discretion of the arbitrators be barred from presenting any matter, arguments or defenses at the hearing.

(3) Respondent(s) shall serve each party with a copy of any Third Party Claim. The Third Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. Third Party Respondent(s) shall respond in the manner provided for response to the claim, as provided in paragraphs (b)(1) and (b)(2) above.

(4) The Claimant shall serve each party with a reply to a counterclaim within ten (10) business days of receipt of an Answer containing a counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

(5) The Director of Arbitration may extend any time period in this section whether such be denominated as a Claim, Answer, Counterclaim, Cross-claim, Reply or Third Party Pleading.

(c) Service and Filing with the Director of Arbitration

(1) For purposes of this Rule, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or, by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(2) If an OTP Firm or OTP Holder [member firm] and a person associated with the OTP Firm or OTP Holder [member firm] are named parties to an arbitration proceeding at the time of the filing of the Statement of Claim, service on the person associated with the OTP Firm or OTP Holder [member firm] may be made on the associated person or the OTP Firm or OTP Holder [member firm], which shall perfect service upon the associated person. If the OTP Firm or OTP Holder [member firm] does not undertake to represent the associated person, the OTP Firm or OTP Holder [member firm] shall serve the associated person with the Statement of Claim, shall advise all parties and the Director of Arbitration of that fact, and shall provide such associated person's current address.

(d) Joining and Consolidation

(1) Permissive Joinder. All persons may join in one action as Claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to these Claimants will arise in the action. All persons may be joined in one action as Respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all Respondents will arise in the action. A Claimant or Respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more Claimants according to their respective rights to relief, and against one or more Respondents according to their respective liabilities.

(2) In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.

(3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

(4) All final determinations with respect to joining, consolidation and multiple parties under this subsection shall be made by the arbitration panel.

[Amended: June 21, 1991; July 30, 1993.]

### **General Provisions Governing Pre-Hearing Proceedings**

Rule 12.14(a). Requests for Documents and Information. The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information shall be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) Document Production and Information Exchange.

(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request

prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

(3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under subsection (d) of this section or to a selected arbitrator under subsection (e) of this section.

(c) Pre-Hearing Exchange. At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. The arbitrator(s) may exclude from the arbitration any documents not exchanged or witnesses not identified at that time. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

(d) Pre-Hearing Conference

(1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issue that relates to the pre-hearing process or to the hearing, including but not limited to the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulation of facts, identification and briefing of contested issues, and any other matters which will expedite the arbitration proceedings.

(2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single member of the arbitration panel for decision.

(e) Decisions by Selected Arbitrator. The Director of Arbitration may appoint a single member of the arbitration panel to decide all unresolved issues referred to under this section. In matters involving public customers, such single arbitrator shall be a public

arbitrator, except that the arbitrator may be either public or industry when the public customer has requested a panel consisting of a majority of arbitrators from the securities industry. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines, and issue any other ruling which will expedite the arbitration proceedings, or, is necessary to permit any party to develop fully its case. Decisions under this section shall be made upon the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this section to the full panel.

[Amended: February 5, 1996.]

### **Designation of Time and Place of Hearings**

Rule 12.15. Unless the law directs otherwise, the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight (8) business days prior to the date fixed for the hearing by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing thereafter shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

### **Representation by Counsel**

Rule 12.16. All parties shall have the right to representation by counsel at any stage of the proceedings.

### **Attendance at Hearings**

Rule 12.17(a). The attendance or presence of all persons at hearings including witnesses shall be determined by the arbitrators. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.

(b) If any of the parties, after due notice, fails to appear at a hearing or any adjourned hearing session, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.

### **Adjournments**

Rule 12.18(a). The arbitrators may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitrators.

(b) Unless waived by the Director of Arbitration, a party requesting an adjournment after arbitrators have been appointed shall deposit a fee equal to the initial

deposit of hearing session fees for the first adjournment, and twice the initial deposit of hearing session fees, not to exceed \$1,000, for a second or subsequent adjournment requested by that party. If the adjournment is not granted, the deposit shall be refunded. If the adjournment is granted, the arbitrators may waive the deposit of this fee or in their awards may direct the return of this adjournment fee.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

[Amended: July 30, 1993.]

### **Acknowledgement of Pleadings**

Rule 12.19. The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

### **Subpoenas**

Rule 12.20(a). The arbitrators and any counsel of record to the proceedings shall have the power of the subpoena process as provided by law. All parties shall also be given a copy of a subpoena upon its issuance. The parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

### **Power to Direct Appearances and Production of Documents**

Rule 12.21. The arbitrators shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any OTP Firm or OTP Holder [member or member organization] of the Exchange and/or the production of any records in the possession or control of such persons, OTP Firms or OTP Holders [members or member organizations]. Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

### **Evidence**

Rule 12.22. The arbitrators shall determine the materiality and relevance of any evidence offered and shall not be bound by rules governing the admissibility of evidence.

### **Interpretation of Rule 12 and Enforcement of Arbitrator Rulings**

Rule 12.23. The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Rule and to take appropriate action to obtain

compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

[Amended: July 30, 1993.]

### **Determinations of Arbitrators**

Rule 12.24. All rulings and determinations of the panel shall be by a majority of the arbitrators.

### **Record of Proceedings**

Rule 12.25. A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a record is kept, it shall be a verbatim record. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request, unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrator(s).

### **Oaths of the Arbitrators and Witnesses**

Rule 12.26. Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.

### **Amendments**

Rule 12.27(a). After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise upon all other parties a copy of said change. The other parties may, within ten (10) business days from the receipt of service, file a response with the Director of Arbitration.

(b) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

### **Reopening of Hearings**

Rule 12.28. Where permitted by law, the hearings may be reopened by the arbitrators on their own motion or in the discretion of the arbitrators upon application of a party at any time before the award is rendered.

### **Awards**

Rule 12.29(a). All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the law directs otherwise, all awards rendered pursuant to this Rule shall be deemed final and not subject to review or appeal.

(c) The Director of Arbitration shall endeavor to serve a copy of the award: (i) by registered or certified mail upon all parties, or their counsel, at the address of record; or (ii) by personally serving the award upon the parties; or (iii) by filing or delivering the award in such manner as may be authorized by law.

(d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(e) The award shall contain the names of the parties, a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the date the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearings, and the signatures of the arbitrators concurring in the award.

(f) The awards shall be made publicly available, provided however, that the name of the customer party to the arbitration will not be publicly available if he or she so requests in writing.

(g) Arbitrators may award interest as they deem appropriate.

(h) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award: (i) if not paid within thirty (30) days of receipt, (ii) if the award is the subject of a motion to vacate which is denied, or (iii) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

[Amended: October 9, 1991.]

### **Miscellaneous**

Rule 12.30. This Rule shall be deemed a part of and incorporated by reference in every duly-executed Submission Agreement which shall be binding on all parties.

### **Schedule of Fees**

Rule 12.31(a). At the time of filing a Claim, Counterclaim, Third Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit with the Exchange in the amounts indicated in the Schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where the amount in dispute is \$10,000 or less, no additional deposits shall be required despite the number of hearing sessions. Where the amount in dispute is above \$10,000 and multiple sessions are required, the arbitrator(s) may require any of the parties to make additional deposits for each additional hearing session. In no event shall the aggregate amount deposited per hearing session exceed the amount of the initial deposit as set forth in the above schedule.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference, which lasts four (4) hours or less.

(c) The arbitrators, in their awards, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis, and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing session deposit deposited by any party. Where claims have been joined subsequent to filing, the hearing session fees shall be computed as provided in paragraph (h) of this Rule. The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.

Any forum fees assessed against the customer shall be based on the hearing deposit required under the Industry/Clearing Claimant schedule for the amount of the award, and not on the amount of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed. However, in cases where there is also a customer claim, the customer may be assessed forum fees based on the amount of the customer claim. Amounts deposited by a party shall be applied against forum fees, if any. In addition to forum fees, the arbitrator(s) may determine in their awards the amount of costs incurred pursuant to Rules 12.14, 12.18, 12.20, and 12.25 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne.

If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded, unless the arbitrators determine otherwise.

(d) In a public customer claimant or industry claimant matter, if the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee shall be \$250, and the hearing session deposit shall be \$600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require but shall not exceed \$1,500.

(e) If a matter has been submitted and thereafter is settled or withdrawn more than five (5) business days after the parties have received written notification of the date fixed for the initial hearing session, the Exchange shall retain the total hearing session deposits made by all parties.

(f) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 12.14, 12.18, 12.20 and 12.25. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(g) The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules as a hearing session deposit for a hearing with a single arbitrator.

(h) For Claims filed separately and subsequently joined or consolidated under Rule 12.13(d), the hearing session deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.

(i) In each industry or clearing controversy which is required to be submitted to arbitration as set forth in Rule 12.1, above, requiring expedited hearings, a non-refundable surcharge of \$2,500 shall be paid by all Claimants, collectively, and a non-refundable surcharge of \$2,500 shall be paid by all Respondents, collectively. These fees shall be in addition to all other fees, deposits, or costs which may be required.

(j) In an industry or clearing controversy, where the OTP Firm or OTP Holder [member] claim or controversy does not involve or disclose a money claim, or is unspecified, the filing fee will be \$300 and the hearing session deposit shall be \$1,000 per hearing session.

**SCHEDULE OF FEES**

***PUBLIC CUSTOMER CLAIMANT***  
**(e.g., public customer v. OTP Firm and/or OTP Holder)**

<i>Amount in Dispute (Exclusive of Interest and Expenses)</i>	<i>FILING FEE</i>	<i>HEARING SESSION DEPOSIT</i>		
		<i>Simplified (no hearing)</i>	<i>1 Arbitrator</i>	<i>3 Arbitrators (Regular)</i>
\$.01-\$1,000	\$15	\$15	\$15	-
\$1,000.01-\$2,500	\$25	\$25	\$25	-
\$2,500.01-\$5,000	\$50	\$75	\$100	-
\$5,000.01-\$10,000	\$75	\$75	\$200	-
\$10,000.01-\$30,000	\$100	-	\$300*	\$400
\$30,000.01-\$50,000	\$120	-	\$300**	\$400
\$50,000.01-\$100,000	\$150	-	\$300**	\$500
\$100,000.01-\$500,000	\$200	-	\$300**	\$750
\$500,000.01-\$5,000,000	\$250	-	\$300**	\$1,000
Above \$5,000,000.00	\$300	-	\$300**	\$1,500

***INDUSTRY/CLEARING CLAIMANT***  
**(e.g., OTP Holder or Firm v. customer)**

<i>Amount in Dispute (Exclusive of Interest and Expenses)</i>	<i>FILING FEE</i>	<i>HEARING SESSION DEPOSIT</i>		
		<i>Simplified (no hearing)</i>	<i>1 Arbitrator</i>	<i>3 Arbitrators (Regular)</i>
\$.01-\$1,000	\$500	\$75	\$300	-
\$1,000.01-\$2,500	\$500	\$75	\$300	-
\$2,500.01-\$5,000	\$500	\$75	\$300	-
\$5,000.01-\$10,000	\$500	\$75	\$300	-
\$10,000.01-\$30,000	\$500	-	\$300*	\$600
\$30,000.01-\$50,000	\$500	-	\$300**	\$600
\$50,000.01-\$100,000	\$500	-	\$300**	\$600
\$100,000.01-\$500,000	\$500	-	\$300**	\$750
\$500,000.01-\$5,000,000	\$500	-	\$300**	\$1,000
Above \$5,000,000	\$500	-	\$300**	\$1,500

\* This would apply to the following cases:

- (a) where parties elect to have claims between \$10,000 and \$30,000 resolved by a single arbitrator pursuant to Rule 12.8;
- (b) pre-hearing conferences with a single arbitrator in cases where a three person panel has been appointed.

\*\* For pre-hearing conferences only.

**OTP FIRM or OTP HOLDER [MEMBER] CONTROVERSIES**  
(e.g., associated person v. OTP Holder or Firm)

*HEARING SESSION DEPOSIT*

<i>Amount in Dispute (Exclusive of Interest and Expenses)</i>	<i>FILING FEE</i>	<i>Simplified (no hearing)</i>	<i>1 Arbitrator</i>	<i>3 Arbitrators (Regular)</i>
\$10,000 or less	\$100	-	\$200	-
\$10,001 to \$100,000	\$200	-	-	\$750
\$100,001 or more	\$300	-	-	\$1,000

**[Member] OTP Firm and OTP Holder Surcharge**

Rule 12.32(a) Each OTP Firm and OTP Holder [member, member organization], or associated person who is named a party to an arbitration proceeding, whether in a Claim, Counterclaim, Third-Party Claim, or Cross-Claim shall be assessed a non-refundable surcharge pursuant to the schedule in Rule 12.32(c) when the Arbitration Department perfects service of the claim naming the OTP Firm, OTP Holder [member, member organization] or associated person on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the OTP Firm(s) or OTP Holder(s) [member(s) or member organization(s)] which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No OTP Firm or OTP Holder [member or member organization] shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Rule 12.31.

(b) For purposes of this Rule, service is perfected when the Arbitration Department properly serves the Respondent(s) to the arbitration proceeding under Rule 12.13(c).

(c) Schedule of Surcharge Rates:

<b>Amount in Dispute</b>	<b>Surcharge</b>
\$.01-\$10,000	\$100
\$10,000.01-\$50,000	\$200
\$50,000.01-\$100,000	\$300
\$100,000.01-\$500,000	\$350
Over \$500,000	\$500

[Amended: July 10, 1997.]

RULE 12.33. Reserved

**Requirements When Using Pre-Dispute Arbitration Agreements With Customers**

Rule 12.34(1) Any pre-dispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

- (a) Arbitration is final and binding on the parties.
  - (b) The parties are waiving their right to seek remedies in court, including the right to a jury trial.
  - (c) Pre-arbitration discovery is generally more limited than and different from court proceedings.
  - (d) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
  - (e) The Panel of Arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- (2) Immediately preceding the signature line, there shall be a statement, which shall be highlighted, that the agreement contains a pre-dispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.
- (3) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.
- (4) No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file a claim in arbitration or limits the ability of the arbitrator(s) to make any award.
- (5) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

The requirements of subsection (5) shall apply to agreements signed by an existing or new customer of an OTP Holder or OTP Firm [member or member organization] after (date to be inserted which will be one year from the date of Commission approval).

(6) The requirements of Rule 12.34(1)-(4) shall apply only to new agreements signed by an existing or new customer of an OTP Holder or OTP Firm [member or member organization] after August 21, 1990.

[Amended: July 5, 1990; July 30, 1993.]

### **Waivers**

Rule 12.35. Arbitration claims will be administered in accordance with this Rule 12 only if:

All parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1); provided, however, that the parties are not required to waive CCCP claims in arbitrations solely between or among OTP Holders [members], OTP Firms [member organizations] and/or persons associated with an OTP Firm or OTP Holder [member or member organization] that do not involve consumer-related or employment related claims. PCX will decline jurisdiction over, dismiss and refund fees paid to PCX by the parties for, any arbitration claims in which any of the parties to arbitration fail to sign both waivers, where required.

[Approved: April 24, 2003 (PCX-2003-13).]