

## **Rule 13**

### **Cancellation, Suspension and Reinstatement**

#### **Notice of Expulsion or Suspension**

Rule 13.1(a). An OTP Firm or OTP Holder which is expelled or suspended from any self-regulatory organization as defined in the Securities and Exchange Act of 1934, encounters financial difficulty or operating inadequacies, fails to perform contracts or becomes insolvent, shall give prompt written notification to the Exchange of any such occurrence. [Any provision of the Certificate of Incorporation, the Constitution, or the Rules of the Exchange that provides or purports to provide that the members of the Board of Governors shall not be liable to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor shall not be applied in any instance in which such liability arises directly or indirectly as a result of a violation of federal securities laws.]

(b) An OTP Firm or OTP Holder shall give prompt written notification to the Exchange with respect to the expulsion or suspension of any member or any other Associated Person of such OTP Firm or OTP Holder by any self-regulatory organization.

#### **Procedures for Suspension** **[Liability of Exchange]**

Rule 13.2(a). This Rule sets forth the procedures for certain suspensions, cancellations, bars, and limitations and prohibitions on access to the Exchange's services. [Except as otherwise expressly provided in these rules, neither the Exchange nor its Governors, officers, committee members, employees or agents shall be liable to the members of the Exchange or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. The limitation of liability set forth in this paragraph shall not apply to violations of federal securities laws.

Without limiting the generality of the foregoing and subject to the same exception, the Exchange shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, or any reports of transactions in or quotations for options or other securities, including underlying securities.

The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports index values or related data, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, the provisions of the Constitution, Article VI, Section 6.]

(1) Summary Suspension. In accordance with Section 6(d)(3) of the Exchange Act, the Board of Directors of the Exchange may summarily:

(A) suspend the trading privileges of an OTP Holder, OTP Firm, or any other Associated Person of an OTP Firm who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(B) suspend the trading privileges of an OTP Holder, OTP Firm, or any other Associated Person of an OTP Firm who is in such financial or operating difficulty that the Exchange determines and so notifies the appropriate regulatory agency that such suspension is necessary for the protection of the investors, creditors, OTP Firms, OTP Holders or the Exchange;

(C) suspend the trading privileges of an OTP Holder, OTP Firm, or any other Associated Person of an OTP Firm who is found in violation of any of the prohibited acts as specified in 11.2 (a)-(f); or

(D) limit or prohibit any person with respect to access to services offered by the Exchange if subparagraph (A) or (B) applies to such person, or, in the case of a person who is not an OTP Holder or OTP Firm, if the Exchange determines that such person does not meet the qualification requirements or prerequisites for such access with safety to investors, creditors, OTP Firms, OTP Holders, or the Exchange.

(2) Non-Summary Suspension. The Exchange also may take the following actions, after written notice, after the passage of any grace period and/or applicable cure period, and after opportunity for hearing:

(A) cancel OTP trading privileges of an OTP Holder or OTP Firm that becomes ineligible for OTP trading privileges, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with an OTP Holder or OTP Firm because such person is or becomes ineligible for association under Rule 2.22.

(B) suspend or cancel trading privileges of an OTP Holder or OTP Firm for failure to pay any fees, charges, assessments, or fines to the Exchange under Rule 3.7; or failure to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Rule 12;

(C) cancel trading privileges of an OTP Holder or OTP Firm for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Exchange under Rule 10.2(b).

(D) limit or prohibit any OTP Holder, OTP Firm, Associated Person of an OTP Firm, or other person with respect to access to services offered by the Exchange, if the Exchange determines that such person does not meet the qualification requirements or prerequisites for such access or such person cannot be permitted to continue to have access with safety to investors, creditors, OTP Holders, OTP Firms, or the Exchange.

(b) Any person aggrieved by any summary action taken under Rule 13.2(a)(1) shall be promptly notified of the suspension and the reason therefor, and afforded an opportunity for a hearing by the Exchange in accordance with the provisions of this Rule and any other applicable Rules of the Exchange. The Exchange shall provide the suspended or affected person or organization with a written statement of, and give them an opportunity to be heard upon or defend against, the specific grounds for the suspension or disciplinary proceeding. A record of any such hearing shall be maintained. A determination by the Exchange to continue the suspension or impose a disciplinary sanction shall be supported by a statement setting forth the specific grounds for such suspension or sanction. [Whenever custody of an unexecuted order is transmitted by a member to or through the Exchange's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Exchange, excluding the Options Intermarket Linkage system, whereby the Exchange assumes responsibility for the transmission or execution of the order, provided that the Exchange has acknowledged receipt of such order, the Exchange's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph, (b), and no assets of the Exchange shall be applied or shall be subject to such liability in excess of the following limits:

(i) As to any one or more claims made by a single member growing out of the use or employment of the facilities afforded by the Exchange on a single trading day, the Exchange shall not be liable in excess of the larger of \$100,000, or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;

(ii) As to the aggregate of all claims made by all members growing out of the use or employment of the facilities afforded by the Exchange on a single trading day, the Exchange shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;

(iii) As to the aggregate of all claims made by all members growing out of the use or enjoyment of the facilities afforded by the Exchange during a single calendar month, the Exchange shall not be liable in excess of the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.]

(c) Any action taken pursuant to Rule 13.2(a)(1) or (2) shall also be subject to the applicable provisions of Rule 10.14. [If all of the claims arising out of the use or enjoyment of the facilities afforded by the Exchange cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b) above, then such maximum amount shall be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, written notice of which has been given to the Exchange no later than the opening of trading on the next business day following the day on which the use or enjoyment of Exchange facilities giving rise to the claim occurred, based on the proportion that each such claim bears to the sum of all such claims.]

Commentary:

.01 In the event a determination is made by the Exchange to take summary action pursuant to this Rule, notice thereof will be sent to the Securities and Exchange Commission. In addition, the Securities and Exchange Commission may on its own motion order, or such a person or organization may apply to the Securities and Exchange Commission, for a stay of such summary action pending the results of a hearing.

**Effect of Suspension or Cancellation**

**[Legal Proceedings Against Exchange Governors, Officers, Employees or Agents]**

Rule 13.3. When an OTP Holder, OTP Firm, or other Associated Person of an OTP Firm has its trading privileges suspended or canceled by the Exchange for any reason specified in Rule 13.2(a)(1) or (2), such a person or organization shall be deprived during the term of the suspension of all rights and trading privileges conferred by an OTP, except as otherwise provided in the Rules of the Exchange. The person or organization having trading privileges suspended or canceled shall remain subject to the disciplinary power of the Exchange with respect to any disciplinary action as provided by the Rules of the Exchange. [No member or person associated with a member shall institute a lawsuit or other legal proceeding against any Governor, officer, employee, agent or other official of the Exchange or any subsidiary of the Exchange, for actions taken or omitted to be taken in connection with the official business of the Exchange or

any subsidiary, except to the extent such actions or omissions constitute violations of federal securities laws for which a private right of action exists and except with respect to the Governors of the Exchange, to the extent inconsistent with the Certificate of Incorporation. This Rule shall not apply to appeals of disciplinary actions or other actions by the Exchange as provided for in the Rules.]

**Disciplinary Measures During Suspension**  
**[Exchange's Costs of Defending Legal Proceedings]**

Rule 13.4. An OTP Holder, OTP Firm or Associated Person of OTP Firm whose trading privileges are suspended under the provisions of Rule 13.3(a)(1) or (2) may be disciplined pursuant to the Rules of the Exchange for any offense committed either before or after the announcement of the suspension, in all respects as if no suspension were in effect. [Any member, or person associated with a member who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Exchange or any of its Governors, officers, committee members, employees or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed Fifty Thousand Dollars (\$50,000.00). This provision shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board of Governors has granted a waiver of this Rule.]

**Liability for Options Intermarket Linkage**

**Investigation Following Summary Suspension**

Rule 13.5. Every OTP Holder, OTP Firm or Associated Person of OTP Firm whose trading privileges are suspended under the provisions of Rule 13.2(a)(1) shall immediately afford every facility required by the Exchange for the investigation of its affairs as required by the Board of Directors and shall, after the notification of the suspension, file with the Exchange a written statement covering all information required by the Exchange.

[13.5(a). The Exchange operates the Options Intermarket Linkage ("Linkage") for its Members or associated persons therewith pursuant to Rules 6.92-6.96. It shall be the responsibility of each Member or associated person therewith to verify the accuracy of transactions sent and received through the Linkage. The Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 13.2

(b) The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively "OCC"), shall not be liable to Members or associated persons therewith for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of

orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades, or otherwise.]

### **Grounds for Cancellation**

Rule 13.6. If an OTP Holder, OTP Firm or other Associated Person of OTP Firm has had trading privileges suspended under the provisions of Rule 13.2(a)(1) and such person or organization does not request a hearing within thirty (30) calendar days to review such suspension, or at such hearing it is determined that the suspension was properly imposed, and such person or organization, has not within forty-five (45) calendar days after the suspension remedied the reason for such suspension and has not applied for reinstatement, the Board may cancel the trading privileges of such person or organization. If application for reinstatement is made within forty-five (45) calendar days of suspension as provided in this Rule, and such application is disapproved, the Board may cancel the trading privileges of such person or organization.

### **Reinstatement**

Rule 13.7 When an OTP Holder, OTP Firm or Associated Person of an OTP Firm has had its trading privileges suspended under the provisions of Rule 13.2(a)(1) or (2) applies for reinstatement, it must be demonstrated to the satisfaction of the Exchange that the problem or problems responsible for such suspension have been satisfactorily resolved. If such problem involves financial difficulty or operating inadequacies, the person or organization shall furnish to the Exchange comprehensive financial and operating reports in a form and manner to be prescribed by the Exchange. If the OTP Holder, OTP Firm or Associated Person of an OTP Firm furnishes satisfactory proof of a resolution of the problem or problems responsible for such suspension, the Exchange shall notify in writing all OTP Holders and OTP Firms of the application for reinstatement and that a meeting of the Board to consider it will be held on a designated date which shall be not less than ten (10) business days subsequent to such notice. At such meeting at which a quorum is present the OTP Holder, OTP Firm or Associated Person of an OTP Firm may be reinstated provided not less than a majority of the Directors voting approve the application.

### **Failure to Obtain Reinstatement**

Rule 13.8. If an OTP Holder, OTP Firm, or Associated Person of an OTP Firm whose trading privileges have been suspended under the provisions of this Rule fails or is unable to apply for reinstatement in accordance with Rule 13.7, or fails to obtain reinstatement as therein provided, trading privileges conferred by an OTP will terminate.