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§ 5.25 Applicability of the Act.

Except as otherwise specified in this part and unless the context otherwise requires, the provisions of Sections 4b, 4c(b), 4f, 4g, 4k, 4m, 4n, 4o, 6(c)–(e), 6b, 6c, 8(a)–(e), 8a and 12(f) of the Act shall apply to retail forex transactions that are subject to the requirements of this part as though such provisions were set forth herein and included specific references to retail forex transactions and the persons defined in §5.1 of this part.

PART 7—CONTRACT MARKET RULES ALTERED OR SUPPLEMENTED BY THE COMMISSION

Subpart A—General Provisions

Sec.

7.1 Scope of rules.

Subpart B [Reserved]

7.100–7.101 [Reserved]

Subpart C—Board of Trade of the City of Chicago Rules

7.200–7.201 [Reserved]

AUTHORITY: 7 U.S.C. 7(a) and 12a(7).

SOURCE: 45 FR 51526, Aug. 1, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 7.1 Scope of rules.

This part sets forth contract market rules altered or supplemented by the Commission pursuant to section 8a(7) of the Act.

Subpart B [Reserved]

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§§ 7.100–7.101 [Reserved]

Subpart C—Board of Trade of the City of Chicago Rules

§ 7.200–7.201 [Reserved]

PART 8—EXCHANGE PROCEDURES FOR DISCIPLINARY, SUMMARY, AND MEMBERSHIP DENIAL ACTIONS

Subpart A—General Provisions

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AUTHORITY: 7 U.S.C. 6c, 7a, 12a and 12c, unless otherwise noted.

SOURCE: 43 FR 41950, Sept. 19, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 8.01 Scope of rules.

This part sets forth the standards to be followed by an exchange in establishing procedures for investigating and adjudicating possible rule violations within the disciplinary jurisdiction of the exchange, for taking summary action in member responsibility

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cases and in cases involving violations of rules regarding decorum, submission of records or other similar activities, and for adjudicating membership denial determinations. Nothing in this part shall be construed to prohibit an exchange from adopting additional rules and practices not inconsistent with those set forth herein.

§ 8.02 Implementing exchange rules.

(a) Each exchange shall submit to the Commission for its approval rules implementing the following regulations: §§ 8.11, 8.13, 8.15, 8.17, 8.18 and 8.20 of subpart B and §§ 8.26 and 8.28 of subpart C. Any such rule not previously submitted to the Commission shall not be put into effect prior to Commission approval.

(b) An exchange may adopt rules implementing any or all of the following regulations: §§ 8.10, 8.16 and 8.19 of subpart B and § 8.27 of subpart C. Each rule so adopted and not previously submitted to the Commission shall be submitted to the Commission for its approval and shall not be put into effect prior to Commission approval.

§ 8.03 Definitions.

For purposes of this part:

(a) *Board of appeals* means that body provided for in § 8.19.

(b) *Charge* or *charges* means any charge or charges contained in the notice of charges.

(c) *Disciplinary committee* means that body or bodies provided for in § 8.08.

(d) *Disciplinary procedure* means the rules of an exchange governing the investigation and adjudication of possible rule violations and the imposition of appropriate penalties under subpart B of this part.

(e) *Enforcement staff* means that body provided for in § 8.05.

(f) *Exchange* means any board of trade which has been designated as a contract market for one or more commodities pursuant to section 5 of the Act or to trade commodity options pursuant to part 33 of this chapter.

(g) *Investigation report* means the report required by § 8.07.

(h) *Notice of charges* means the notice required by § 8.11.

(i) *Penalty* means any restriction, limitation, censure, fine, expulsion,

suspension, revocation, reprimand, cease and desist order, sanction or any other disciplinary action for any amount or of any definite or indefinite period imposed upon any person within the disciplinary jurisdiction of an exchange upon a finding by the disciplinary committee that a violation has been committed or pursuant to the terms of a settlement agreement.

(j) *Person(s) within the jurisdiction of an exchange* means any exchange employee, staff member or official, any member or person with membership privileges or any person employed by or affiliated with a member or person with membership privileges, including any agent or associated person, and any other person under the supervision or control of the exchange or of any member.

(k) *Record of the proceeding* means all testimony, exhibits, papers and records produced at or filed in a disciplinary or summary proceeding or served on a respondent or an exchange.

(l) *Respondent* means any person named in a notice of charges who has been served with such notice or who is the subject of a summary action.

(m) *Rule(s) of an exchange* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy or instrument corresponding thereto.

(n) *Violation* means any violation within the disciplinary jurisdiction of the exchange.

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 54525, Nov. 3, 1981]

Subpart B—Disciplinary Procedure

§ 8.05 Enforcement staff.

(a) Each exchange shall establish an adequate enforcement staff which shall be authorized by the exchange to initiate and conduct investigations, to prepare reports incident to such investigations and to prosecute possible rule violations within the disciplinary jurisdiction of the exchange. The enforcement staff shall consist of employees of the exchange and/or persons hired on a contract basis. It may not include either members of the exchange or persons whose interests conflict with enforcement duties. When

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carrying out any responsibility under this part 8 or any rule adopted pursuant thereto, a member of the enforcement staff may not operate under the direction or control of any person or persons with trading privileges.

(b) Each exchange is responsible for assuring the effective and diligent enforcement of all rules within its disciplinary jurisdiction, regardless of whether its enforcement staff consists of employees or persons hired on a contract basis.

§ 8.06 Investigations.

(a) Each exchange shall establish and maintain a disciplinary procedure which requires the enforcement staff of the exchange to conduct investigations of possible rule violations within the disciplinary jurisdiction of the exchange. Such an investigation shall be commenced:

(1) Upon the receipt of a request from the Commission, its Executive Director or his delegee, or

(2) Upon the discovery or receipt of information by the exchange which, in the judgment of the enforcement staff, indicates a possible basis for finding that a violation has occurred or will occur.

(b) Each enforcement staff investigation shall be completed within four months, unless there exists significant reason to extend it beyond such period. If for any reason the enforcement staff closes an investigation before determining whether a reasonable basis exists for finding that a violation has occurred, the staff shall fully set forth the reasons for so closing the investigation in its report.

§ 8.07 Investigation reports.

(a) The enforcement staff shall submit a written investigation report to the disciplinary committee of the exchange in every instance in which the enforcement staff has determined from surveillance or from an investigation that a reasonable basis exists for finding a violation. The investigation report shall include the reason the investigation was initiated, a summary of the complaint, if any, the relevant facts, the enforcement staff's conclusions and a recommendation as to

whether the disciplinary committee should proceed with the matter.

(b) If after conducting an investigation the enforcement staff has determined that no reasonable basis exists for finding a violation, it shall prepare a written report including the reason the investigation was initiated, a summary of the complaint, if any, the relevant facts, the enforcement staff's conclusions and, if applicable, any recommendation that the disciplinary committee issue a warning letter in accordance with paragraph (c) of this section. The report shall become part of the investigation file which thereafter may be closed.

(c) In addition to the action required to be taken under either paragraph (a) or (b) of this section, the rules of an exchange may authorize the enforcement staff to issue a warning letter to a person under investigation or to recommend that the disciplinary committee issue such a letter. A warning letter issued in accordance with this section is not a penalty or an indication that a finding of a violation has been made. A copy of such warning letter issued by the enforcement staff shall be included in the investigation report required by paragraph (a) or (b) of this section.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.08 Disciplinary committee.

Each exchange shall establish one or more disciplinary committees which shall be authorized by the exchange to determine whether violations have been committed, to accept offers of settlement and to set and impose appropriate penalties. Each such disciplinary committee shall consist of one or more members of the exchange or persons on the staff of the exchange; however, persons on the enforcement staff may not serve on a disciplinary committee.

§ 8.09 Review of investigation report.

The disciplinary committee shall promptly review each investigation report. In the event the disciplinary committee determines that additional investigation or evidence is needed, it

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shall promptly direct the enforcement staff to conduct its investigation further. Within a reasonable period of time not to exceed 30 days after the receipt of a completed investigation report, the disciplinary committee shall take one of the following actions:

(a) If the disciplinary committee determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and contain a brief statement setting forth the reasons therefor.

(b) If the disciplinary committee determines that a reasonable basis exists for finding a violation which should be adjudicated, it shall direct that the person alleged to have committed the violation be served with a notice of charges and shall proceed in accordance with the rules of this subpart.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.10 Predetermined penalties.

An exchange may adopt rules which set specific maximum penalties for particular violations. If the rules of an exchange establish predetermined penalties, the disciplinary committee shall have discretion in each case whether to employ the predetermined penalty. If the predetermined penalty is employed, it shall be stated in the notice of charges. In such case, after a hearing on a denied charge where a respondent is found to have committed the violation charged, the disciplinary committee shall impose the predetermined penalty or an appropriate lesser penalty.

§ 8.11 Notice of charges.

The notice of charges shall:

(a) State the acts, practices, or conduct in which the person is alleged to have engaged;

(b) State the rule alleged to have been violated (or about to be violated);

(c) State the predetermined penalty, if any;

(d) Prescribe the period within which a hearing on the charges may be requested;

(e) Advise the person charged that:

(1) He is entitled, upon request, to a hearing on the charges;

(2) If the rules of the exchange so provide, failure to request a hearing within the period prescribed in the notice, except for good cause, shall be deemed a waiver of the right to a hearing; and

(3) If the rules of the exchange so provide, failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

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[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.12 Right to representation.

Upon being served with a notice of charges the respondent shall have the right to be represented by legal counsel or any other representative of his choosing in all succeeding stages of the disciplinary proceeding.

§ 8.13 Answer to charges.

The respondent shall be given a reasonable period of time to file an answer to the charges. The rules of an exchange may provide that:

(a) The answer must be in writing and include a statement that the respondent admits, denies or does not have and is unable to obtain sufficient information to admit or deny each allegation. A statement of a lack of sufficient information shall have the effect of a denial of an allegation.

(b) Failure to file an answer on a timely basis shall be deemed an admission of all allegations contained in the notice of charges.

(c) Failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

§ 8.14 Admission or failure to deny charges.

(a) The rules of an exchange may provide that if the respondent admits or fails to deny any of the charges the disciplinary committee may find that the rule violation alleged in the notice of charges for which the respondent admitted or failed to deny any of the charges has been committed. If the exchange rules so provide, then:

(1) The disciplinary committee shall impose a penalty no greater than the

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predetermined penalty, if any, stated in the notice of charges for the corresponding violation found to have been committed.

(2) If no predetermined penalty was stated, the disciplinary committee shall impose a penalty for each violation found to have been committed.

(b) The disciplinary committee shall promptly notify the respondent in writing of any penalty to be imposed pursuant to paragraph (a) of this section and shall advise him that he may request a hearing on such penalty within a reasonable period of time, which shall be stated in the notice, but that except for good cause shown no hearing shall be permitted on a penalty imposed pursuant to subparagraph (a)(1) of this section.

(c) The rules of an exchange may provide that if a respondent fails to request a hearing within the period of time stated in the notice he shall be deemed to have accepted the penalty.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.15 Denial of charges and right to hearing.

In every instance where the respondent has requested a hearing on a charge which is denied, or on a penalty set by the disciplinary committee under § 8.14(a)(2), he shall be given an opportunity for a hearing in accordance with the requirements of § 8.17. The exchange rules may provide that, except for good cause, the hearing shall be concerned only with those charges denied and/or penalties set by the disciplinary committee under § 8.14(a)(2) for which a hearing has been requested.

§ 8.16 Settlement offers.

(a) The rules of an exchange may permit a respondent to submit a written offer of settlement to the disciplinary committee at any time after the investigation report is completed. The disciplinary committee may accept the offer of settlement, but may not alter its terms unless the respondent agrees.

(b) The rules of an exchange may provide that the disciplinary committee, in its discretion, may permit the respondent to accept a penalty without

either admitting or denying the rule violations upon which the penalty is based.

(c) If an offer of settlement is accepted by the disciplinary committee, it shall issue a written decision specifying the rule violations it has reason to believe were committed and any penalty to be imposed. Where applicable, the decision shall also include a statement that the respondent has accepted the penalties imposed without either admitting or denying the rule violations.

(d) The respondent may withdraw his offer of settlement at any time before final acceptance by the disciplinary committee. If an offer is withdrawn after submission, or is rejected by the disciplinary committee, the respondent shall not be deemed to have made any admissions by reason of the offer of settlement and shall not be otherwise prejudiced by having submitted the offer of settlement.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.17 Hearing.

(a) The following minimum requirements shall apply to any hearing required by this subpart:

(1) The hearing shall be fair and shall be conducted before members of the disciplinary committee. The hearing may be conducted before all of the members of the disciplinary committee or a panel thereof, but no member of the disciplinary committee may serve on the committee or panel if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter under consideration.

(2) The respondent shall be entitled in advance of the hearing to examine all books, documents, or other tangible evidence in the possession or under the control of the exchange which are to be relied upon by the enforcement staff in presenting the charges contained in the notice of charges or which are relevant to those charges.

(3) The hearing shall be promptly convened after reasonable notice to the respondent.

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(4) The formal rules of evidence need not apply; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing.

(5) The enforcement staff shall be a party to the hearing and shall present its case on those charges and penalties which are the subject of the hearing.

(6) The respondent shall be entitled to appear personally at the hearing.

(7) The respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.

(8) The respondent shall be entitled to call witnesses and to present such evidence as may be relevant to the charges.

(9) The exchange shall require persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.

(10) If the respondent has requested a hearing, a substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed under § 8.19, or is reviewed by the Commission pursuant to section 8c of the Act or part 9 of this chapter. In all other instances a summary record of a hearing is permitted.

(i) The rules of an exchange may provide that the cost of transcribing the record of the hearing shall be borne by a respondent who requests the transcript, appeals the decision pursuant to § 8.19, or whose application for Commission review of the disciplinary action has been granted under part 9 of this chapter. In all other instances, the cost of transcribing the record shall be borne by the exchange.

(b) The rules of an exchange may provide that a penalty may be summarily imposed upon any person within its ju-

risdiction whose actions impede the progress of a hearing.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.18 Decision.

Promptly following a hearing conducted in accordance with § 8.17, the disciplinary committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(a) The notice of charges or a summary of the charges;

(b) The answer, if any, or a summary of the answer;

(c) A brief summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

(d) A statement of findings and conclusions with respect to each charge, including the specific rules which the respondent is found to have violated; and

(e) A declaration of any penalty imposed and the effective date of such penalty.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.19 Appeal.

The rules of an exchange may permit a respondent to appeal promptly an adverse decision of a disciplinary committee in all or in certain classes of cases. Such rules may require a respondent's notice of appeal to be in writing and to specify the findings, conclusions, and/or penalty to which objection is taken. If the rules of an exchange permit appeal, they shall provide for the following:

(a) The exchange shall establish a board of appeals which shall be authorized to hear appeals of respondents. In addition, the rules of an exchange may provide that the board of appeals may, on its own initiative, order review of a decision by the disciplinary committee within a reasonable period of time after the decision has been rendered.

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(b) No member of the board of appeals shall serve on an appeal or review panel if such member participated in any prior stage of the disciplinary proceeding or if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter. The rules of an exchange may provide that the appeal or review proceeding may be conducted before all of the members of the board of appeals or a panel thereof. Except for good cause shown, the appeal or review shall be conducted solely on the record before the disciplinary committee, the written exceptions filed by the parties, and the oral or written arguments of the parties.

(c) Promptly following the appeal or review proceeding, the board of appeals shall issue a written decision and shall provide a copy to the respondent. The decision shall include a statement of findings and conclusions with respect to each charge or penalty reviewed, including the specific rules which the respondent was found to have violated by the disciplinary committee, and a declaration of any penalty imposed and the effective date of such penalty.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.20 Final decision.

Each exchange shall establish rules setting forth when a decision rendered pursuant to this subpart B shall become the final decision of such exchange.

Subpart C—Summary Actions

§ 8.25 Member responsibility actions.

An exchange may suspend at any time, or take other summary action against, a person subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace.

§ 8.26 Procedure for member responsibility actions.

An action pursuant to § 8.25 shall be taken in accordance with an exchange

procedure which provides for the following:

(a) The respondent shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the respondent shall be served with a notice at the earliest possible opportunity. The notice shall:

(1) State the action,

(2) Briefly state the reasons for the action, and

(3) State the effective time and date and the duration of the action.

(b) The respondent shall have the right to be represented by legal counsel or any other representative of his choosing in all proceedings subsequent to the summary action taken pursuant to § 8.25.

(c) The respondent shall promptly be given opportunity for a subsequent hearing. The hearing shall be fair and shall be held before one or more persons authorized by the exchange to conduct hearings pursuant to this section. The hearing shall be conducted in accordance with the requirements set forth in §§ 8.17(a)(4)–(9) and (b).

(d) Promptly following the hearing provided for in paragraph (c) of this section, the exchange shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(1) A description of the summary action taken,

(2) The reasons for the summary action,

(3) A brief summary of the evidence produced at the hearing,

(4) Findings and conclusions,

(5) A determination that the summary action should be affirmed, modified or reversed, and

(6) A declaration of any action to be taken pursuant to the determination specified in paragraph (d)(5) of this section and the effective date and duration of such action.

(e) The rules of an exchange may permit the respondent to appeal promptly an adverse decision. Such rules shall be

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established in accordance with the requirements set forth in § 8.19.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

§ 8.27 Violations of rules regarding decorum, submission of records or other similar activities.

An exchange may adopt rules which permit the enforcement staff or a designated committee of officials to summarily impose minor penalties against persons within its jurisdiction for violating rules regarding decorum, attire, the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities.

§ 8.28 Final decision.

Each exchange shall establish rules setting forth when a decision rendered pursuant to this subpart C shall become the final decision of such exchange.

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OR OTHER ADVERSE ACTIONS

Subpart A—General Provisions

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- 9.2 Definitions.
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Subpart B—Notice and Effective Date of Disciplinary Action or Access Denial Action

- 9.10 [Reserved]
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Subpart C—Initial Procedure With Respect to Appeals

- 9.20 Notice of appeal.

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AUTHORITY: 7 U.S.C. 4a, 6c, 7a, 12a, 12c, 16a, unless otherwise noted.

SOURCE: 52 FR 25366, July 7, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 9.1 Scope of rules.

(a) *Matters included.* This part governs the review by the Commission, pursuant to section 8c of the Act, as amended, of any suspension, expulsion, disciplinary or access denial action, or other adverse action by an exchange.

(b) *Matters excluded.* This part does not apply to and the Commission will not accept notices of appeal, or petitions for stay pending review, of:

(1) Any arbitration proceeding, regardless of whether the proceeding was conducted pursuant to the provisions of section 5a(a)(11) of the Act or involved a controversy between members of an exchange;

(2) Except as provided in §§ 9.11(a), 9.11(b)(1)-(5), 9.11(c), 9.12(a) and 9.13 (concerning the notice, effective date and publication of a disciplinary or access denial action), any summary action authorized under the provisions of § 8.27 of this chapter imposing a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and

(3) Any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase,