



REGULATORY INFORMATION BULLETIN

**RAN-00-12
May 16,2000**

TO: All PCX Members and Member Organizations

FROM: Department of Regulatory Policy

**SUBJECT: Disciplinary Procedures
SR-PCX-99-10**

On May 4, 2000, the Securities and Exchange Commission approved a PCX rule change to amend PCX disciplinary procedures. Specifically, the rule change amends PCX rules on disciplinary proceedings at the Exchange, and in particular, adds new rules to codify the independent function of PCX Regulatory Staff; to clarify what communications are improper in the context of pending investigations or disciplinary proceedings; to provide PCX Regulatory Staff with the ability to issue formal complaints for the alleged violation of Exchange rules; to permit qualified persons who are not members to serve on hearing panels; and otherwise to codify procedures relating to hearing panelists' conflicts of interest.

Following is the text of the rule change that the SEC approved. Questions regarding this Bulletin may be directed to Robert Pacileo, Senior Attorney, Regulatory Policy at (415) 393-7926.

EXHIBIT A

Text of the Proposed Rule Change¹

RULE 10

DISCIPLINARY JURISDICTION AND APPEALS

¶ 6061 Disciplinary Jurisdiction

Rule 10.1 - No change.

¶ 6067 Investigations and Regulatory Cooperation

Rule 10.2(a). The Exchange Regulatory Staff will function independently of the commercial interests of the Exchange members and will have the sole discretion to investigate, and will ~~shall~~ investigate, possible violations within the disciplinary jurisdiction of the Exchange. ~~upon order of the Board of Governors, the Executive Committee, the Ethics and Business Conduct Committee, or the Floor Trading Committees or upon receipt of a complaint alleging such violations filed by a member or by any other person.~~ No member of the Board of Governors or the Executive Committee or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding. ~~All such complaints should specify in reasonable detail the facts constituting the violation, including the specific statutes, Exchange Constitutional provisions, Rules, commentaries, resolutions, policies or procedures allegedly violated. A member or person associated with a member is entitled to be represented by counsel during any Exchange investigation.~~

~~(b) No member or person associated with a member shall impede or delay an Exchange investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange nor refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange shall be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.~~

(b) Any person, any Exchange committee, the Board of Governors or the Executive Committee may submit for investigation a complaint alleging possible

¹ New text is underscored.

violations. Each complaint must specify in reasonable detail the facts constituting the violation and any specific federal statute, rule, regulation or Exchange constitutional provision, rule, commentary, resolution, policy or procedure allegedly violated.

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

(c) A member, member organization or associated person is entitled to be represented by counsel during any Exchange investigation.

~~(b) (d) No member, member organization, or person associated with a member associated person or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b) may shall~~ impede or delay an Exchange investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange ~~nor~~ or refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange ~~shall~~ will be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action.

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

Commentary:

.01 - No change.

Regulatory Cooperation

~~(d) (f) No member, member organization, associated person person associated with a member or member organization, or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b), shall~~ may refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or

testimony in connection with any inquiry resulting from an agreement entered into by the Exchange pursuant to Rule 14.1. The requirements of this Rule ~~10.2(d)~~ 10.2(f) ~~shall~~ will apply regardless of whether the Exchange has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule ~~10.3~~ 10.5.

Commentary:

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

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

Ex Parte Communications

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

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

(2) No person who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding, or any interested PCX staff, with knowledge of a pending investigation or disciplinary proceeding may make, or knowingly cause to be made, an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Governors; (b) a member of the Executive Committee; (c) a person who advises the Board of Governors or the Executive Committee; (d) any member of Exchange

Regulatory Staff; or (e) the Subject of a pending Exchange investigation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent.

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

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

(1) all such written communications;

(2) memoranda stating the substance of all such oral communications; and

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

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

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

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

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

(1) The Chief Regulatory Officer has the authority to direct the disqualification of the interested member of the Hearing Panel or disciplinary committee.

(2) The Chief Executive Officer has the authority to direct the disqualification of the Chief Regulatory Officer.

Commentary:

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

¶ 6073

Complaints and Answers

Rule 10.4 [Note – Rule 10.4 has been renumbered as Rule 10.5]

~~Rule 10.310.4(a) Whenever it shall appear to the Board of Governors, the Executive Committee, or any standing committee designated by the Board of Governors to review disciplinary proceedings that~~ Any standing committee designated by the Board of Governors to review disciplinary proceedings, and Exchange Regulatory Staff designated by the Exchange, has the authority to determine whether there is probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and that further proceedings are warranted, the. If the Exchange Regulatory Staff (“the Complainant”) determines that further proceedings are warranted, then the Exchange Regulatory Staff will initiate a formal disciplinary action by preparing a statement of charges (“the Complaint”) against the any person or member, member organization or associated person alleged to have committed a violation (“the Respondent”) specifying the acts in which the Respondent is charged alleged to have

engaged in, or which the Respondent is alleged to have omitted, and ~~setting forth~~ alleging the specific provisions of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, Exchange constitutional provisions, rules, commentaries, resolutions, policies or procedures, of which such acts or omissions are alleged to be in violation.

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

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

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

Commentary:

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

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Hearing Panels

Rule 10.8(a) Within a reasonable time after a Complaint has been authorized pursuant to Rule 10.5, or after an application for appeal has been submitted for a sanction imposed under the Minor Rule Plan, the Chair or Vice Chair of the disciplinary committee that has jurisdiction over the proceeding will appoint one or more qualified persons, including but not limited to members and associated persons, as panelists (“the Panel”) to adjudicate or review the issues and to rule on any motions of the parties. Prior to ruling on any motion or the conduct of any hearing or review, the parties will be notified by the Hearing Administrator of the composition of the Panel.

(b) Each member of the Panel is required to disclose to the Hearing Administrator any conflict of interest, bias, or circumstances that might reasonably preclude such member from rendering an objective and impartial determination in the proceeding. A

party may object to the appointment of any member of the Panel based on a reasonable, good faith belief of the existence of a conflict of interest, bias or circumstances where the fairness of a member serving on the Panel might reasonably be questioned. Any objection by a party to the composition of the Panel must be submitted in writing to the Hearing Administrator within seven calendar days of service on the party of the notification regarding the composition of the Panel. Disclosures by a member of the Panel and objections to the composition of the Panel will be promptly investigated by the Hearing Administrator and ruled upon by the Chair or Vice Chair of the disciplinary committee that has jurisdiction over the proceeding. In the event of the disqualification of a member of the Panel, the Chair or Vice Chair will promptly appoint a replacement. The Hearing Administrator will promptly inform the parties of any information disclosed by a member of the Panel if the member has not been removed.