

CHAPTER 15 DISCIPLINARY ACTIONS

PART A DISCIPLINARY POWERS

15.01 General

- (1) In this Chapter,
- (a) “Participant” includes a Participating Organisation and Registered Person(s) of the Participating Organisation, Market Maker and Derivatives Specialist;
 - (b) “disciplinary proceedings” where the context permits includes appeal proceedings under Part E of this Chapter 15; and
- (2) Where the acts or omissions of a Registered Person(s), employee or agent of a Participating Organisation, Market Maker or Derivatives Specialist would have been subject to these Rules had such acts or omissions been committed by the Participating Organisation, Market Maker or Derivatives Specialist, as the case may be, then such acts or omissions are deemed to be committed by that Participating Organisation, Market Maker or Derivatives Specialist, as the case may be, and disciplinary action may be taken against it.

15.02 Disciplinary powers

The Exchange may exercise its disciplinary powers under Part A of this Chapter 15 against a Participant if the Participant is found to have breached any of these Rules and Directives. The Exchange’s disciplinary powers include the taking of one or more of the following actions:

- (a) reprimanding (publicly or privately) a Participant;
- (b) imposing a fine not exceeding RM1 million on a Participant;
- (c) suspending a Participant in accordance with the terms prescribed by the Exchange;
- (d) striking a Participant off the Register where the Participant will immediately cease to enjoy the privileges of Participantship;
- (e) imposing any restrictions or conditions in relation to the breach committed or on activities that a Participant undertakes;
- (f) imposing one or more conditions for compliance including issuing a directive to take such steps to remedy or mitigate the breach, other than a directive to make restitution;
- (g) directing a Participant to take appropriate action against any of the Participant’s employees or agents if such a person caused the Participant to commit the breach;
- (h) mandating education, training or such other types of programme as may be determined by the Exchange to be undertaken or implemented by the Participant for its employees;
- (i) *[Deleted]*
- (j) any other action the Exchange considers appropriate, subject to consultation with the Commission; or
- (k) in respect of a breach of these Rules that relates to a function that has been outsourced, imposing any restriction or condition in relation to the breach committed or on the activities that a Participant undertakes.

15.03 Procedures

- (1) The Exchange will determine the procedures applicable to any disciplinary proceedings taken under this Chapter. Such procedures may vary to adapt to the circumstances of any particular case.
- (2) The Exchange is not bound by legal rules of evidence and procedure in any disciplinary proceedings under this Chapter.

15.04 Agreed settlement

- (1) A Participant may, at any time before the Exchange makes a decision under Rule 15.12, propose a settlement of the disciplinary action by agreeing to a set of facts, liability or penalty with the Exchange.
- (2) The Exchange may reject, accept or vary the proposed settlement based on terms that the Exchange deems fit.
- (3) Where the Exchange accepts the proposed settlement, the agreed settlement will be recorded as a decision of the Exchange.
- (4) If the Exchange is not agreeable to the proposed settlement, the proceedings under Part C of this Chapter 15 will apply.

15.05 Request for oral representations

- (1) A Participant may request for an oral representation to make submissions or to procure the attendance of witnesses or legal representation at such oral representation for proceedings commenced against the Participant. Any such request must be submitted with the Response provided under Rule 15.11 or the Notice of Appeal stated in Rule 15.17.
- (2) The Exchange may, in its absolute discretion, allow or disallow any request made pursuant to Rule 15.05(1), upon such terms and conditions as the Exchange deems appropriate.

15.06 Standard of proof

The Exchange will not find an allegation proven unless the Exchange is satisfied that the allegation is proven on the balance of probabilities.

15.07 Cumulative actions or penalties

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15.08 Other rights

The exercise of powers in Rule 15.02 does not in any way prejudice the other rights of the Exchange against a Participant, or any other person to whom these Rules are directed.

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PART B VIOLATIONS

15.09 Violation by Participants

Any Participant ("Defaulting Participant") who, in any circumstances, directly or indirectly –

- (a) commits a breach of or violates any of these Rules;
- (b) has failed to comply with any of the Exchange's decisions, directives, rulings or guidelines (other than those guidelines which are expressed to be non-binding) made under these Rules and/or by the Exchange;
- (c) violates any provision of the Clearing House Rules or Depository Rules;
- (d) is found by the Exchange to be guilty of misconduct;
- (e) fails to pay, when due, any debt incurred by it to another Participant in respect of any dealing in securities;
- (f) becomes insolvent;
- (g) fails to perform his duties efficiently, honestly or fairly;
- (h) being a Participating Organisation:
 - (i) after becoming aware of any inability on its part to comply with the minimum financial requirements as contained in these Rules, fails to notify the Exchange of such inability;
 - (ii) fails to submit its financial reporting statements or annual audited accounts as required by these Rules within the time prescribed for submission;
 - (iii) provides false representation(s) to the Exchange and/or omits to provide any material information to the Exchange;
- (i) being a Dealer's Representative:
 - (i) without prejudice to the generality of the foregoing –
 - (aa) falsely declares authentication of an account opening application; or
 - (bb) without proper authority, makes use of another person's particulars of an account;
 - (ii) falsifies particulars of an account;
 - (iii) falsifies signature of a Client or any other forms of authorisation by the Client;
 - (iv) unlawfully transacts on another person's account;
 - (v) commits any act in breach of his fiduciary position in respect of the foregoing matters;
 - (vi) unlawfully delegates powers or assigns duties properly vested in him to unauthorised person or persons; or
 - (vii) applies any amount paid or securities deposited by a Client to any person not entitled thereto or for payment other than the said Client's trading account;

will be in breach of these Rules and be dealt with in accordance with the provisions of these Rules relating to the disciplinary proceedings.

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PART C DISCIPLINARY PROCEEDINGS

15.10 Requisite Notice

The Exchange will serve on a Defaulting Participant against whom disciplinary action is proposed to be taken a written notice specifying the nature and particulars of the breach the Defaulting Participant is alleged to have committed ("**Requisite Notice**").

15.11 Response to Requisite Notice

The Defaulting Participant may submit to the Exchange a written response to the Requisite Notice ("**Response**") within the time stipulated in the Requisite Notice.

15.12 Notification of decision

After the conclusion of the disciplinary proceedings, the Exchange will notify the Defaulting Participant of the decision including the penalty imposed (if any).

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PART D EXPEDITED PROCEEDINGS

15.13 Scope

The Exchange may initiate expedited proceedings under this Rule 15.13 against a Defaulting Participant against whom disciplinary action is proposed to be taken instead of the proceedings under Part C of this Chapter 15 in circumstances the Exchange deems fit, such as in respect of a breach of the Rules which does not typically attract a penalty beyond:

- (a) a reprimand;
- (b) a fine of RM10,000.00; or
- (c) both of the above.

15.14 Procedure

- (1) The Exchange will notify the Defaulting Participant that the matter will be proceeded with by way of expedited proceedings. The notice will specify the breach and penalty imposed for the breach ("**Determination**").
- (2) The Defaulting Participant must, within the time prescribed in the Determination, inform the Exchange whether or not the Defaulting Participant agrees with the Determination. A Defaulting Participant is deemed to have agreed with the Determination if the Defaulting Participant does not respond within the prescribed time.
- (3) If the Defaulting Participant agrees or is deemed to have agreed with the Determination, disciplinary action will be recorded as having been taken against the Defaulting Participant on the date of the Defaulting Participant's agreement or upon expiry of the prescribed time.
- (4) If the Defaulting Participant agrees or is deemed to have agreed with the Determination, any fine imposed as a penalty for the breach must be paid:
 - (a) upon the Defaulting Participant informing the Exchange in writing of his agreement with the Determination; or
 - (b) within the time prescribed in the Determination;as the case may be.
- (5) If the Defaulting Participant does not agree with the Determination, the matter will proceed under Part C of this Chapter 15. The Defaulting Participant may, within the time prescribed in the Determination, submit a written response to the Determination as if the Determination is a Requisite Notice under Rule 15.10. In deliberating the matter under Part C of this Chapter 15, the Exchange is not bound by the Determination and may impose a higher penalty based on the facts or evidence presented during the proceedings under Part C of this Chapter 15.

15.15 No limitation

Nothing in Part D of this Chapter 15 prevents the Exchange from proceeding with disciplinary proceedings under Part C of this Chapter 15 for any breach of a Rule.

PART E APPEAL

15.16 Right of appeal

- (1) In amplification of Rule 2.05, any party to the disciplinary proceedings taken under Part C of this Chapter 15 and Rule 15.14(5) who is dissatisfied with a decision resulting from the disciplinary proceedings, may appeal against such decision in the manner prescribed in Rule 15.17 unless the decision was recorded pursuant to an agreed settlement under Rule 15.04(3) (“**the Appellant**”).
- (2) The Exchange may suspend the enforcement of any action taken under Rule 15.02 that is the subject of the appeal until the disposal of the appeal.

15.17 Notice of appeal

The Appellant must, within the time stated in the notification of decision given under Rule 15.12, give to the Exchange a notice (“Notice of Appeal”) that:

- (a) identifies the decision against which the appeal is made; and
- (b) sets out the ground(s) of the appeal together with the representations to justify the ground(s) relied upon.

15.18 Deliberation of appeal

- (1) An Appellant may produce evidence that was not presented at the initial disciplinary proceedings if:
 - (a) the evidence was not available at the time of the initial disciplinary proceedings; and
 - (b) the evidence would have been likely to have had a determining influence upon the decision appealed against.
- (2) The Appellant must produce the new evidence as stated in Rule 15.18(1) when submitting the Notice of Appeal.
- (3) The Exchange may exercise its powers under Part C of Chapter 14 and produce new evidence arising from the Notice of Appeal submitted by a Defaulting Participant.
- (4) The Exchange may affirm, vary or set aside the decision appealed against.

15.19 Notification of decision on appeal

After the conclusion of an appeal, the Exchange will notify the Defaulting Participant of the decision of the appeal and such decision is final.

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PART F EFFECT OF DISCIPLINARY ACTION

15.20 General

- (1) A Defaulting Participant must give effect to a decision made under Part C or Part D of this Chapter 15 or a decision affirmed or varied under Part E of this Chapter 15 within the time stipulated by the Exchange.
- (2) If a Defaulting Participant fails to give effect to such decision made, affirmed or varied within the stipulated time, the Defaulting Participant is deemed to have committed a breach of these Rules and the Exchange may take further action as stated under Rule 15.02.

15.21 Period of payment and effect of non-payment of fine

- (1) Without prejudice to Rule 15.20(2), a fine imposed by the Exchange must be paid by the Defaulting Participant within the time prescribed in the notice under Rule 15.12 or Rule 15.19
- (2) Pursuant to Rule 15.21(1) and Rule 15.14(4), a Defaulting Participant who fails to make payment within the stipulated time frame will be summarily suspended from further trading, or as the case may be, from its functions and activities.
- (3) Where the fine remains unpaid 7 days after the suspension under Rule 15.21(2), the Exchange may at any time thereafter summarily strike the Defaulting Participant off the Register.
- (4) A fine or any portion of a fine remaining unpaid by a Defaulting Participant is a debt owing by the Defaulting Participant to the Exchange.

15.22 Effect of suspension

- (1) A suspension imposed by the Exchange upon the Defaulting Participant:
 - (a) takes effect on the date prescribed in the notice under Rule 15.12 or Rule 15.19 ("**the said notice**"); and
 - (b) remains for such period as prescribed in the said notice but the period may be extended by the Exchange for such period as it considers appropriate.
- (2) A Defaulting Participant with access to trade on or through the stock market of the Exchange who has been suspended for any reason must immediately cease to trade on the Exchange but nothing is to be construed as releasing or discharging such Defaulting Participant from remaining liable in all respects to fulfil all its obligations pursuant to or under these Rules.

[End of Chapter]