

Regulatory Circular RG04-70

DATE: June 14, 2004

TO: Exchange Members and Committee Members

FROM: Legal Division

RE: Committee Standards and Procedures

This circular sets forth certain standards that Exchange committee members are required to adhere to in connection with their committee service and certain procedures that Exchange committees are required to follow in making committee decisions.

The committee standards and procedures set forth in this circular apply to non-Board level committees. Board level committees are subject to Board policies in this regard applicable to the Board of Directors and its committees.

Standards Applicable to Committee Members

Importance of Reading Committee Materials

It is extremely important to the functioning of the Exchange's committee process that committee members carefully read all of the materials included their committee orientation manuals and committee meeting packets. This includes, but is not limited to, all of the rules and policies administered by the committee, committee minutes, and any rule filings initiated or reviewed by the committee.

In reviewing committee materials, committee members should ensure that the committee's minutes accurately reflect meeting attendance, the determinations made by the committee at each meeting, and any recusals from discussions or votes. Committee members should also let appropriate Exchange staff members know if in their view any draft rule filing or other document reviewed by the committee does not accomplish the intent of the committee.

Confidentiality Standards

Committee members should maintain the confidentiality of any committee discussions or documents that are designated by the committee as confidential. In addition, committee members should keep confidential the individual comments expressed at committee meetings by other committee members as well as how particular committee members voted with respect to particular issues before the committee.

Exchange committees are an integral part of the operation of the Exchange. Disclosure of confidential committee discussions or documents to non-committee members can jeopardize the committee's function. In addition, disclosure of the particular views or votes of individual

committee members may limit the sincere, open, and honest participation of committee members in the committee process and the free exchange of comments and ideas at committee meetings.

In the event that a committee member violates any of the confidentiality standards set forth above, the committee member and any member organization with which the committee member is associated may be subject to disciplinary action pursuant to Exchange Rule 4.1, Just and Equitable Principles of Trade, or to other appropriate action by the Exchange, including immediate dismissal from the Exchange committee(s) on which the committee member serves and a bar from future service on any Exchange committees.

Recusal Standards

If a committee member believes that he or she may not be able to participate in a committee discussion or vote on a particular issue in a fair and impartial manner due to a conflict of interest or for any other reason, the committee member should recuse himself or herself from the discussion or vote. Procedurally, proper recusal requires (1) that the committee member announce at the committee meeting the committee member's intent to recuse himself or herself from the discussion or vote, (2) that the committee member generally leave the room during the discussion or vote, and (3) that the minutes of the committee meeting reflect the committee member's recusal from the discussion or vote and the absence of the committee member from the room, if applicable.

Recusal may also be appropriate in order to avoid even the appearance of a conflict of interest. Each case of possible recusal must be decided on its own merits. However, recusal from a discussion or vote is ordinarily appropriate under the following circumstances:

- (1) if the committee member or a person or organization associated with the committee member could disproportionately benefit, directly or indirectly, from the discussion or vote;
- (2) if a financial or business relationship exists with an individual or entity that is the subject of the discussion or vote (however, this does not necessarily include occasional and non-material arm's length business);
- (3) if the committee member is engaged in the management of a clearing firm and the matter under consideration concerns the clearing firm or an individual or entity (or person associated with an individual or entity) that cleared through the clearing firm either at the time of the issue in question or at the time of the discussion or vote; or
- (4) if reasons of personal prejudice and/or bias against or in favor of a person or entity, or any other reason, could cause the committee member to be unable to decide the matter fairly and impartially.

Upon request, the committee's legal counsel will assist any committee member who is uncertain as to whether or not he or she should recuse himself or herself from a discussion or vote. To this end, committee members should advise the committee's legal counsel of any affiliation or relationship that may give rise to an apparent conflict of interest.

Procedures Applicable to Committee Decision-Making

Subcommittee Authority

Committees are permitted to designate subcommittees to advise or make recommendations to the full committee concerning particular subjects or issues. However, in no event may a subcommittee take action or act on behalf of a committee (or be delegated the authority to do so by a committee), unless the subcommittee's authority to take action or act on behalf of a committee is specifically set forth in an Exchange rule, the committee's charter, or a resolution of the Board of Directors.

Quorum and Vote Requirements

No action may be taken by a committee at a committee meeting unless a quorum of the committee is present at the meeting. Unless otherwise provided by Exchange rules, a majority of the members of a committee constitutes a quorum of the committee. The presence at a committee meeting of a committee member who is recused from a particular discussion or vote counts toward the committee's quorum requirement.

Unless otherwise provided by Exchange rules, the vote of a majority of the members of a committee voting at a meeting of the committee at which a quorum is present shall be the act of the committee.

Meeting Minutes

The minutes of a committee meeting should reflect all of the decisions made by the committee at that meeting.

The draft minutes of a committee meeting should be included in draft form in the meeting packet for the next meeting of the committee. The committee should then vote at that next meeting on whether to approve the draft minutes of the previous meeting. If any changes to these draft minutes of the previous meeting are approved by the committee at the next meeting, the minutes for this next meeting should reflect that the committee determined to amend the draft minutes of the previous meeting and should briefly describe the approved changes to those draft minutes. Whether the draft minutes of the previous meeting are approved as is or are changed by the committee at the next meeting, the final version of these minutes should then be included in final form as an informational item in the meeting packet for the next meeting of the committee after the meeting at which these minutes are approved by the committee.

Copies of Board of Directors minutes and committee minutes are available to any member of the Exchange upon written request to the Exchange's Legal Division. Any such request should specify the particular time frame of interest. However, under certain circumstances, portions of the minutes may be redacted from the copies to protect confidentiality.

(Regulatory Circular RG03-111, Revised)