

## OMB APPROVAL

OMB Number: 3235-0045  
 Estimated average burden  
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 67

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2019 - \* 065

Amendment No. (req. for Amendments \*)

Filing by Cboe Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 806(e)(1) \*

☐

Section 806(e)(2) \*

☐

Section 3C(b)(2) \*

☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes to move the Rules in Chapter XVIII, which governs Exchange arbitrations, of the currently effective Rulebook to proposed Chapter 14 of the shell structure for the Exchange's Rulebook that will become effective upon the migration.

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Rebecca Last Name \* Tenuta  
 Title \* Counsel  
 E-mail \* rtenuta@cboe.com  
 Telephone \* (312) 786-7068 Fax

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 09/25/2019

By Rebecca Tenuta

(Name \*)

Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

rtenuta@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**Item 1.        Text of the Proposed Rule Change**

(a)        Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to move the Rules in Chapter XVIII, which governs Exchange arbitrations, of the currently effective Rulebook (“current Rulebook”) to proposed Chapter 14 of the shell structure for the Exchange’s Rulebook that will become effective upon the migration of the Exchange’s trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (“shell Rulebook”). The text of the proposed rule change is provided in Exhibit 5.

(b)        Not applicable.

(c)        Not applicable.

**Item 2.        Procedures of the Self-Regulatory Organization**

(a)        The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on September 25, 2019. The proposed rule change would become operative on the date on which Cboe Options completes the migration of its trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below), which is expected to occur on October 7, 2019.

(b)        Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta, (312) 786-7068, Cboe Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

**Item 3.        Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a)        Purpose

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2

Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to relocate current Chapter XVIII which governs arbitrations, to proposed Chapter 14 in the shell Rulebook. The Exchange notes that in addition to relocating the arbitration rules to proposed shell Chapter 14, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change relocates the rules as follows:

Shell Rule	Current Rule
<b>CHAPTER 14. ARBITRATION</b>	<b>CHAPTER XVIII. ARBITRATION</b>
14.1 Matters Subject to Arbitration	18.1 Matters Subject to Arbitration
14.2 FINRA Jurisdiction over Arbitrations Against TPHs	18.1A FINRA Jurisdiction over Arbitrations Against TPHs
14.3 Procedures in TPH Controversies	18.2 Procedures in TPH Controversies
14.4 Arbitration	18.3 Arbitration
14.5 Class Action Claims	18.3A Class Action Claims
14.6 Simplified Arbitration	18.4 Simplified Arbitration

14.7 Waiver of Hearing	18.5 Waiver of Hearing
14.8 Time Limitation upon Submission	18.6 Time Limitation upon Submission
14.9 Dismissal or Termination of Proceedings	18.7 Dismissal or Termination of Proceedings
14.10 Settlements	18.8 Settlements
14.11 Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration	18.9 Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration
14.12 Designation of Number of Arbitrators	18.10 Designation of Number of Arbitrators
14.13 Notice of Selection of Arbitrators	18.11 Notice of Selection of Arbitrators
14.14 Challenges	18.12 Challenges
14.15 Disclosures Required of Arbitrators	18.13 Disclosures Required of Arbitrators
14.16 Disqualification or Other Disability of Arbitrators	18.14 Disqualification or Other Disability of Arbitrators
14.17 Initiation of Proceedings	18.15 Initiation of Proceedings
14.18 Designation of Time and Place of Hearings	18.16 Designation of Time and Place of Hearings
14.19 Representation by Counsel	18.17 Representation by Counsel
14.20 Attendance at Hearings	18.18 Attendance at Hearings
14.21 Failure to Appear	18.19 Failure to Appear
14.22 Adjournments	18.20 Adjournments
14.23 Acknowledgement of Pleadings	18.21 Acknowledgement of Pleadings
14.24 General Provisions Governing Pre-Hearing Proceeding	18.22 General Provisions Governing Pre-Hearing Proceeding
14.25 Evidence	18.24 Evidence
14.26 Interpretation of Code and Enforcement of Arbitrator Rulings	18.25 Interpretation of Code and Enforcement of Arbitrator Rulings

14.27 Determinations of Arbitrators	18.26 Determinations of Arbitrators
14.28 Record of Proceedings	18.27 Record of Proceedings
14.29 Oaths of the Arbitrators and Witnesses	18.28 Oaths of the Arbitrators and Witnesses
14.30 Amendments	18.29 Amendments
14.31 Reopening of Hearings	18.30 Reopening of Hearings
14.32 Awards	18.31 Awards
14.33 Miscellaneous	18.32 Miscellaneous
14.34 Schedule of Fees	18.33 Schedule of Fees
14.35 Requirements when Using Pre-Dispute Arbitration Agreements with Customers	18.35 Requirements when Using Pre-Dispute Arbitration Agreements with Customers
14.36 Failure to Honor Award	18.37 Failure to Honor Award

The proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their numbers, conform paragraph structure and number/lettering format to that of the shell Rulebook, and make cross-reference changes to shell rules.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>1</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>2</sup> requirements that the rules of an exchange be designed to prevent fraudulent and

---

<sup>1</sup> 15 U.S.C. 78f(b).

<sup>2</sup> 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>3</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As stated, the proposed rule change makes no substantive changes to the rules. The proposed rule change is merely intended to relocate the Exchange's rules to the shell Rulebook and update their numbers, paragraph structure, including number and lettering format, and cross-references to conform to the shell Rulebook as a whole in anticipation of the technology migration on October 7, 2019. As such, the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the way the Exchange's Rulebook is organized, making it easier to read, and, particularly, helping market participants better understand the rules of the Exchange, which will also result in less burdensome and more efficient regulatory compliance.

**Item 4. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the

---

<sup>3</sup> Id.

Act. The proposed rule change is not intended as a competitive change, but rather, seeks to make non-substantive rule changes in relocating the rules and updating cross-references to shell rules in anticipation of the October 7, 2019 technology migration. The Exchange also does not believe that the proposed rule change will impose any undue burden on competition because the relocated rule text is exactly the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

**Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The Exchange neither solicited nor received comments on the proposed rule change.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>4</sup> and Rule 19b-4(f)(6)<sup>5</sup> thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule

---

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).



change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The proposed rule change will not significantly affect the protection of investors and the public interest because it does not make any substantive changes to the Exchange Rules, but merely relocates arbitration rules to the shell Rulebook and updates update their numbers, paragraph structure, including number and lettering format, and cross-references to conform to the shell Rulebook as a whole upon the October 7, 2019 technology migration. The proposed non-substantive changes will make the Exchange Rules easier to read and understand for all investors, benefiting investors and the public interest by resulting in less burdensome and more efficient regulatory compliance upon migration. The proposed rule change will not impose any significant burden on competition because it is merely relocating the current Exchange Rules, all of which have been previously filed with the Commission, and makes no substantive changes to the current rules. As stated, the proposed rule change is not intended as a competitive filing but is instead intended to provide an organized and uniform shell Rulebook to the benefit of all market participants upon migration.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

The Exchange respectfully requests that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective so that the Exchange can restructure its Rulebook as already approved by the Commission. As described above, the proposed rule change merely relocates current rules into Chapter 14 of the shell Rulebook, which will be effective upon migration on October 7, 2019. The proposed rule change makes no substantive changes to any of the rules, thus, the proposed rule changes will have no impact on trading on the Exchange, the operation of the Exchange, or any participant requirements. The Exchange also notes that its participants have been notified of and preparing for the October 7, 2019 migration, and resulting Rulebook restructuring, since April 5, 2018.<sup>6</sup> Finally, the Exchange notes that other Exchanges have relocated their rules in a similar manner.<sup>7</sup> The Exchange believes that relocating the rules regarding Exchange arbitrations, which currently remain in the current Rulebook, to proposed Chapter 14 of the shell

---

<sup>6</sup> See Cboe Global Markets News Release (April 5, 2018), available at <http://ir.cboe.com/~media/Files/C/CBOE-IR-V2/press-release/2018/pr-04-05-2018.pdf>; see also Securities Exchange Act Release No. 84739 (December 6, 2018), 83 FR 63952 (December 12, 2018) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt a Shell Structure for the Cboe Options Rulebook in Connection With the Migration of the Exchange to Bats Technology) (SR-CBOE-2018-074).

<sup>7</sup> See e.g. Securities and Exchange Act Release No. 82505 (January 16, 2018), 83 FR 3037 (January 22, 2018) (Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Price Improvement XL Rule) (SR-Phlx-2018-06); and Securities and Exchange Act Release No. 84659 (November 27, 2018), 83 FR 62391 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Options Exercise and Delivery Rules) (SR-BX-2018-056).

Rulebook, as well as updating their numbers, paragraph structure, including number and lettering format, and cross-references to conform to the shell Rulebook will provide investors with a holistic Exchange Rulebook upon migration. Therefore, the Exchange respectfully requests that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change promptly becomes effective October 7, 2019 and avoids any potential confusion by providing investors with a complete Exchange Rulebook upon the completion of migration.

(c) Not applicable.

(d) Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule either of another self-regulatory organization of the Commission.

**Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11. Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5A. Proposed rule text – current Rulebook.

Exhibit 5B. Proposed rule text – shell Rulebook.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-       ; File No. SR-CBOE-2019-065]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Move the Rules in Chapter XVIII, Which Governs Exchange Arbitrations, of the Currently Effective Rulebook (“Current Rulebook”) to Proposed Chapter 14 of the Shell Structure for the Exchange’s Rulebook that will Become Effective Upon the Migration of the Exchange’s Trading Platform to the Same System Used by the Cboe Affiliated Exchanges (as Defined Below) (“Shell Rulebook”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to move the Rules in Chapter XVIII, which governs Exchange arbitrations, of the currently effective Rulebook (“current Rulebook”) to proposed Chapter 14 of the shell structure for the

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) ("shell Rulebook"). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **1. Purpose**

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) ("Cboe Global"), which is also the parent company of Cboe C2 Exchange, Inc. ("C2"), acquired Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX" or "EDGX Options"), Cboe BZX Exchange, Inc. ("BZX" or "BZX Options"), and Cboe BYX Exchange, Inc. ("BYX" and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the "Cboe Affiliated Exchanges"). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology

migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to relocate current Chapter XVIII which governs arbitrations, to proposed Chapter 14 in the shell Rulebook. The Exchange notes that in addition to relocating the arbitration rules to proposed shell Chapter 14, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change relocates the rules as follows:

<b>Shell Rule</b>	<b>Current Rule</b>
<b>CHAPTER 14. ARBITRATION</b>	<b>CHAPTER XVIII. ARBITRATION</b>
14.1 Matters Subject to Arbitration	18.1 Matters Subject to Arbitration
14.2 FINRA Jurisdiction over Arbitrations Against TPHs	18.1A FINRA Jurisdiction over Arbitrations Against TPHs
14.3 Procedures in TPH Controversies	18.2 Procedures in TPH Controversies
14.4 Arbitration	18.3 Arbitration
14.5 Class Action Claims	18.3A Class Action Claims
14.6 Simplified Arbitration	18.4 Simplified Arbitration
14.7 Waiver of Hearing	18.5 Waiver of Hearing
14.8 Time Limitation upon Submission	18.6 Time Limitation upon Submission
14.9 Dismissal or Termination of Proceedings	18.7 Dismissal or Termination of Proceedings
14.10 Settlements	18.8 Settlements

14.11 Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration	18.9 Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration
14.12 Designation of Number of Arbitrators	18.10 Designation of Number of Arbitrators
14.13 Notice of Selection of Arbitrators	18.11 Notice of Selection of Arbitrators
14.14 Challenges	18.12 Challenges
14.15 Disclosures Required of Arbitrators	18.13 Disclosures Required of Arbitrators
14.16 Disqualification or Other Disability of Arbitrators	18.14 Disqualification or Other Disability of Arbitrators
14.17 Initiation of Proceedings	18.15 Initiation of Proceedings
14.18 Designation of Time and Place of Hearings	18.16 Designation of Time and Place of Hearings
14.19 Representation by Counsel	18.17 Representation by Counsel
14.20 Attendance at Hearings	18.18 Attendance at Hearings
14.21 Failure to Appear	18.19 Failure to Appear
14.22 Adjournments	18.20 Adjournments
14.23 Acknowledgement of Pleadings	18.21 Acknowledgement of Pleadings
14.24 General Provisions Governing Pre-Hearing Proceeding	18.22 General Provisions Governing Pre-Hearing Proceeding
14.25 Evidence	18.24 Evidence
14.26 Interpretation of Code and Enforcement of Arbitrator Rulings	18.25 Interpretation of Code and Enforcement of Arbitrator Rulings
14.27 Determinations of Arbitrators	18.26 Determinations of Arbitrators
14.28 Record of Proceedings	18.27 Record of Proceedings
14.29 Oaths of the Arbitrators and Witnesses	18.28 Oaths of the Arbitrators and Witnesses
14.30 Amendments	18.29 Amendments

14.31 Reopening of Hearings	18.30 Reopening of Hearings
14.32 Awards	18.31 Awards
14.33 Miscellaneous	18.32 Miscellaneous
14.34 Schedule of Fees	18.33 Schedule of Fees
14.35 Requirements when Using Pre-Dispute Arbitration Agreements with Customers	18.35 Requirements when Using Pre-Dispute Arbitration Agreements with Customers
14.36 Failure to Honor Award	18.37 Failure to Honor Award

The proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their numbers, conform paragraph structure and number/lettering format to that of the shell Rulebook, and make cross-reference changes to shell rules.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open

---

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).



market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As stated, the proposed rule change makes no substantive changes to the rules. The proposed rule change is merely intended to relocate the Exchange's rules to the shell Rulebook and update their numbers, paragraph structure, including number and lettering format, and cross-references to conform to the shell Rulebook as a whole in anticipation of the technology migration on October 7, 2019. As such, the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the way the Exchange's Rulebook is organized, making it easier to read, and, particularly, helping market participants better understand the rules of the Exchange, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive change, but rather, seeks to make non-substantive rule changes in relocating the rules and updating cross-references to shell rules in anticipation of the October 7, 2019 technology migration. The Exchange also does not believe that the proposed rule change will impose any undue

---

<sup>7</sup> Id.

burden on competition because the relocated rule text is exactly the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments

---

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2019-065 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2019-065. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change;

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-065 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Secretary

---

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5A

(additions are underlined; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe Exchange, Inc.

(currently effective)

\* \* \* \* \*

**[CHAPTER XVIII. ARBITRATION****Rule 18.1. Matters Subject to Arbitration**

(a) Any dispute, claim or controversy, arising between parties who are Trading Permit Holders \* or persons associated with a Trading Permit Holder which arises out of the Exchange business of such parties shall, at the request of any such party and the approval of the Exchange's Director of Arbitration, be submitted for arbitration in accordance with these rules.

(b) Any dispute, claim or controversy, arising between a non-Trading Permit Holder and a Trading Permit Holder or persons associated with a Trading Permit Holder which arises out of the Exchange business of such Trading Permit Holder or a person associated with a Trading Permit Holder shall, at the request of such non-Trading Permit Holder and the approval of the Exchange's Director of Arbitration, be submitted for arbitration in accordance with these rules.

(c) If a party to a dispute, in an Answer, Reply, or other written response to a request for arbitration, has challenged the appropriateness of submitting a matter to arbitration under this Chapter, the Director of Arbitration shall serve upon the parties written notice of his decision to accept or reject the matter for arbitration. The decision by the Director of Arbitration to accept or reject a matter for arbitration shall, at the request of any party to the dispute, be subject to review by the Board of Directors or a panel of the Board composed of at least three Directors. Requests for review must be submitted in writing to the Secretary of the Exchange within ten calendar days from receipt of notice of the Director of Arbitration's decision.

(d) The arbitration provisions of this Chapter shall not constitute a prospective waiver of any right of action that may arise under the federal securities laws.

**... Interpretations and Policies:**

.01 For purposes of this Chapter, the terms Trading Permit Holder and a person associated with a Trading Permit Holder shall be deemed to encompass those persons who were former (a) Trading Permit Holders, (b) Exchange members, or persons treated the same as members, under the Constitution and Rules of the Exchange in effect immediately prior to the Restructuring Transaction, (c) persons associated with a Trading Permit Holder, or (d) persons associated with a member, or a person treated the same as a member, under the Constitution and Rules of the Exchange in effect immediately prior to the Restructuring Transaction.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a Trading Permit Holder or a person associated with a Trading Permit Holder to fail to submit a dispute for arbitration on demand under the provisions of this Chapter, or to fail to provide any document in his possession or control as directed pursuant to the provisions of this Chapter or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Chapter where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

.03

(a) For the purposes of Rule 18.1(a), the term “Exchange business” does not include a dispute, claim or controversy alleging employment discrimination, including sexual harassment.

(b) Notwithstanding the policy set forth in paragraph (a), the Exchange may make its arbitration facilities available for the resolution of employment discrimination, including sexual harassment, claims if the parties mutually agree to arbitrate the claim after the claim has arisen. Any determination pursuant to this paragraph will be made by the Director of Arbitration.

.04 Rules 18.1 through 18.37, with the exception of Rule 18.1A, apply only to arbitrations filed prior to April 30, 2015 and are otherwise of no force or effect. All arbitrations filed prior to April 30, 2015 shall, until concluded, continue to be administered by the Exchange.

\* The term “Trading Permit Holder” as defined in the Bylaws and used in the Rules includes a nominee of a TPH organization unless the context otherwise requires.

#### Rule 18.1A. FINRA Jurisdiction over Arbitrations against Trading Permit Holders

(a) General. The Rule 12000 Series and Rule 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes) (the “FINRA Code of Arbitration”), as the same may be in effect from time to time, shall govern Exchange arbitrations except as may be specified in this Rule 18.1A. Definitions in the FINRA Code of Arbitration shall have the same meaning as that prescribed therein, and procedures contained in the FINRA Code of Arbitration shall have the same application as toward Exchange arbitrations.

(b) Jurisdiction. As of [insert Effective Date], any dispute, claim or controversy arising out of or in connection with the Exchange business of any Trading Permit Holder or person associated with a Trading Permit Holder may be arbitrated under this Rule 18.1A except that (1) a dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute may only be arbitrated if the parties have agreed to arbitrate it after the dispute arose; and (2) any type of dispute, claim, or controversy that is not permitted to be arbitrated under the FINRA Code of Arbitration, such as class action claims, shall not be eligible for arbitration under this Rule 18.1A.

(c) Predispute Arbitration Agreements. The requirements of FINRA Rule 2268 shall apply to predispute arbitration agreements between Trading Permit Holders and their customers.

(d) Referrals. If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Exchange for disciplinary investigation pursuant to Rule 12104 or Rule 13104 (as applicable) of the FINRA Code of Arbitration.

(e) Payment of Awards. Any Trading Permit Holder, or person associated of a Trading Permit Holder, who fails to honor an award of arbitrators appointed in accordance with Rule 18.1A shall be subject to disciplinary proceedings in accordance with Chapter 17 of Exchange Rules.

(f) Other Exchange Actions. The submission of any matter to arbitration under this Chapter shall in no way limit or preclude any right, action or determination by the Exchange which it would otherwise be authorized to adopt, administer or enforce.

***... Interpretations and Policies:***

.01 For purposes of this Rule 18.1A, the terms Trading Permit Holder and a person associated with a Trading Permit Holder shall be deemed to encompass those persons who were former Trading Permit Holders and former persons associated with a Trading Permit Holder.

**Rule 18.2. Procedures in Trading Permit Holder Controversies**

The following procedures shall apply in any dispute, claim or controversy between parties who are Trading Permit Holders or persons associated with a Trading Permit Holder which is submitted for arbitration pursuant to Rule 18.1(a):

(a) Selection of Arbitrators. The arbitration panel shall be selected by the Director of Arbitration and shall consist of not less than three arbitrators. The arbitrators shall be selected from the Arbitration Committee or, if necessary, from a roster provided by FINRA of qualified non-public arbitrators and/or non-public chairperson-qualified arbitrators, as defined by FINRA's rules governing arbitration industry disputes.

(b) Challenges. Each party to the dispute may peremptorily challenge any person appointed to the arbitration panel. There shall be no fixed limit on the number of peremptory challenges by a party; however, no party may assert an unreasonable number of challenges. The Director of Arbitration shall deny peremptory challenges if both the Director of Arbitration and the Chairman of the Arbitration Committee agree that the number of such challenges by a party has been unreasonable. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Rule 8.11 or Rule 18.22 (d) or (e), whichever comes first. There shall be unlimited challenges for cause.

(c) In any arbitration concerning the alleged failure to pay for floor brokerage services, the following additional provisions shall apply:

(1) In order to commence such a proceeding, the claimant shall include with his statement of claim the following: (i) copies of billing copies of order tickets relating to the unpaid brokerage; (ii) copies of monthly bills reflecting the unpaid brokerage; (iii) copies of evidence reflecting the claimant's post-billing efforts to collect the unpaid brokerage; and (iv) a certification of any efforts, not reflected in writing, made to collect the unpaid brokerage.

(2) If the arbitrators find that the respondent knowingly and purposefully failed to pay for floor brokerage services, and such failure was without sufficient justification or excuse, then the arbitrators have the authority to award up to two times the amount of the brokerage bill, in addition, to whatever determinations the arbitrators may ordinarily make concerning arbitration fees, interest, and attorney's fees or other expenses.

(d) General. Subject to the foregoing provisions of this Rule, the other Rules of Chapter 18 shall apply to arbitrations between Trading Permit Holders except for those provisions specifically applicable to arbitrations involving public customers.

***... Interpretations and Policies:***

.01 In any arbitration concerning the alleged failure to honor a trade, each party to the arbitration shall promptly provide copies of all documents filed or received in the arbitration by that party to the Clearing Trading Permit Holder(s) that guaranteed that party's Exchange transactions when the alleged trade took place.

**Uniform Arbitration Code**

**Rule 18.3. Arbitration**

(a) Any dispute, claim or controversy between a customer or non-Trading Permit Holder and a Trading Permit Holder and/or associated person arising in connection with the business of such Trading Permit Holder and/or associated person in connection with his activities as an associated person shall be arbitrated under the Rules of the Exchange, as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non- Trading Permit Holder.

(b) Under this Code, the Exchange shall have the right to decline the use of its arbitration facilities in any dispute, claim or controversy, where—having due regard for the purposes of the Exchange and the intent of this Code—such dispute, claim or controversy is not a proper subject matter for arbitration.

(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by the Director of Arbitration.

***... Interpretations and Policies:***

.01 Any determination pursuant to Rule 18.3(b) shall be made by the Exchange's Director of Arbitration and shall be subject to review as provided in Rule 18.1(c).

**Rule 18.3A. Class Action Claims**



(a) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Exchange.

(b)

(1) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Exchange if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self regulatory organization for a classwide arbitration. However, such claims shall be eligible for arbitration in accordance with Rule 18.1 or 18.3 or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(2) Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrator(s) appointed in accordance with Rule 18.4 or Rule 18.10, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten (10) business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrator(s).

(c) No Trading Permit Holder and/or associated person shall seek to enforce any agreement to arbitrate against a customer, other Trading Permit Holder or persons associated with a Trading Permit Holder who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until:

(i) the class certification is denied;

(ii) the class is decertified;

(iii) the customer, other Trading Permit Holder or person associated with a Trading Permit Holder is excluded from the class by the court; or

(iv) the customer, other Trading Permit Holder or person associated with a Trading Permit Holder elects not to participate in the putative or certified class action, or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(d) No Trading Permit Holder and/or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.

#### Rule 18.4. Simplified Arbitration

(a) Any dispute, claim or controversy, arising between a public customer(s) and an associated person or a Trading Permit Holder subject to arbitration under this Code involving a dollar amount not exceeding \$10,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the claim. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether a hearing is demanded.

(c) The Claimant shall pay a non-refundable filing fee and remit a hearing deposit as specified in Rule 18.33, Schedule of Fees, upon filing of the Submission Agreement. The final disposition of the fee or deposit shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any forum fees required under Rule 18.33, Schedule of Fees. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third- Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third-Party Claim and a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$10,000, the arbitrator may refer the Claim, Counterclaim and/or Third-Party Claim, if any, to a panel of no less than three (3) arbitrators in accordance with Rule 18.10 of this Code, or he may dismiss the Counterclaim and/or Third-Party Claim, without prejudice to the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counterclaim and/or Third-Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 18.33.

(e) All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrators, a copy of the Answer, Counterclaim, Third-Party Claim or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either:

(i) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrators, a Reply to any Counterclaim, or

(ii) if the amount of the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings will be discontinued without prejudice to the rights of the parties.

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a

hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h)

(i) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(ii) If a hearing is demanded or consented to in accordance with paragraph (f) of this Rule, the General Provisions Governing a Pre-Hearing proceeding under Rule 18.22 shall apply.

(iii) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its requests for document production on all parties. Any response or objection to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the request for production. The selected arbitrator shall resolve all requests under this paragraph on the papers submitted.

(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel that shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(k) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

(l) Except as otherwise provided herein, the general arbitration rules of the Exchange shall be applicable to proceedings instituted under this Rule.

### **Hearing Requirements**

#### **Rule 18.5. Waiver of Hearing**

(a) Any dispute, claim or controversy, except as provided in Rule 18.4 (Simplified Arbitration), shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

#### **Rule 18.6. Time Limitation Upon Submission**

No dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

Rule 18.7. Dismissal or Termination of Proceedings

At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to the remedies provided by law. The arbitrators shall upon the joint request of the parties dismiss the proceeding.

Rule 18.8. Settlements

All settlements upon any matter submitted shall be at the election of the parties.

Rule 18.9. Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration

(a) Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings shall be tolled when a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Exchange shall retain jurisdiction upon the matter submitted.

(b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.

Rule 18.10. Designation of Number of Arbitrators

(a)

(1) In all arbitration matters involving public customers and non-Trading Permit Holders where the amount in controversy exceeds \$10,000 or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel that shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer or non-Trading Permit Holder requests a panel consisting of at least a majority from the securities industry.

(2) An arbitrator will be deemed as being from the securities industry if he or she:

(i) is a person associated with a Trading Permit Holder, broker/dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser; or

(ii) has been associated with any of the above within the past five (5) years; or

(iii) is retired from or spent a substantial part of his or her business career in any of the above; or

(iv) is an attorney, accountant or other professional who has devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

(v) is an individual who is registered under the Commodities Exchange Act or is a member of a registered futures association or any Commodities Exchange or is associated with any such person(s).

(3) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or investment adviser.

(b) Composition of Panels. The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of each panel.

(c) Arbitrator Restrictions. The following restrictions shall apply to persons who serve on the Arbitration Committee.

(i) No member of the Arbitration Committee shall represent a party as counsel in any dispute, claim or controversy submitted for Cboe Options arbitration ("Cboe Options Arbitration") while that member is serving on the Arbitration Committee and for a period of six months after the date on which that member ceases being a member of the Arbitration Committee and,

(ii) if a Committee member is appointed as an arbitrator in a pending Cboe Options Arbitration ("Pending Cboe Options Arbitration") and subsequently ceases being a member of the Committee, but continues to serve as an arbitrator in the Pending Cboe Options Arbitration, that person cannot represent a party as counsel in a separate Cboe Options Arbitration until he or she has ceased serving as an arbitrator in the Pending Cboe Options Arbitration.

-----

## **Guidelines for Classification of Arbitrators**

### **These Guidelines will be Used by the Cboe Exchange, Inc. in Applying Rule 18.10.**

In order to insure continued investor confidence in the arbitration process, the Cboe Exchange, Inc. has adopted the following policies with regard to the classification of securities industry and public arbitrators and to the exercise of challenges for cause:

- (1) Individuals with close securities industry ties such as attorneys, accountants or other professionals who routinely represent industry firms or individuals, will either be reclassified as industry arbitrators or not be used.
- (2) Individuals who have spent a substantial part of their business careers in the securities industry shall always be classified as industry arbitrators.
- (3) Individuals who have spent a relatively minor portion of their career in the securities industry shall not be classified as public arbitrators until at least five (5) years have elapsed from the date of their last industry affiliation. All such past affiliations shall be disclosed and challenges for cause based upon such past affiliations shall be sustained.
- (4) Close family relationships with broker/dealers shall be disclosed and challenges for cause based on such relationships shall be honored.
- (5) Attorneys, accountants and other professionals whose firms have close securities industry ties will still be classified as public arbitrators provided the attorney or other professional does not routinely represent industry firms or individuals. Challenges for cause based on such industry ties will be honored.
- (6) All arbitrators shall read and become familiar with the Code of Ethics for Arbitrators developed by the American Bar Association and the American Arbitration Association.
- (7) Any close question on arbitrator classification or on challenges for cause shall be decided in favor of public customer.
- (8) Spouses of securities industry personnel may not serve as public arbitrators.

-----

#### Rule 18.11. Notice of Selection of Arbitrators

The Director of Arbitration shall inform the parties of the names and employment histories of the arbitrators for the past ten (10) years, as well as information disclosed pursuant to Rule 18.13, at least eight (8) business days prior to the date fixed for the initial hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that any arbitrator, after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties of the name and employment history of the replacement arbitrator for the past ten (10) years, as well as information disclosed pursuant to Rule 18.13, as soon as possible. A party may make further inquiry of the Director of Arbitration concerning the background of replacement arbitrators and within the time remaining prior to the first hearing session or the five (5) day period provided under Rule 18.12, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 18.12.

#### Rule 18.12. Challenges

(a) In any arbitration proceeding, each party shall have the right to one (1) peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Claimants shall have one (1) peremptory challenge, the Respondents shall have one (1) peremptory challenge and the Third-Party Respondents shall have one (1) peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Rule 18.11 or Rule 18.22 (d) or (e), whichever comes first.

(b) There shall be unlimited challenges for cause.

#### Rule 18.13. Disclosures Required of Arbitrators

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration.

(2) Any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in Paragraph (a) above.

(c) The obligation to disclose interests, relationships, or circumstances which might preclude an arbitrator from rendering an objective and impartial determination described in Subsection (a) hereof is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances which arise, or which are recalled or discovered.

(d) Removal by the Director.

(1) The Director of Arbitration may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator based on information not known to the parties when the arbitrator was selected.

(3) The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request that the arbitrator

is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(4) The Director of Arbitration shall inform the parties to an arbitration proceeding of any information disclosed to the Director of Arbitration under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director of Arbitration removes the arbitrator.

#### Rule 18.14. Disqualification or Other Disability of Arbitrators

(a) Disqualification by Director of Arbitration Due to Conflict of Interest or Bias. After the appointment of an arbitrator and prior to the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, if the Director of Arbitration or a party objects, pursuant to Rule 18.12(b), to the continued service of an arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director of Arbitration determines that an arbitrator should be disqualified then the Director of Arbitration will notify both parties of the decision. The parties will have 5 days to retain the arbitrator, notwithstanding the Director of Arbitration's decision to disqualify the arbitrator. The parties must agree to retain the arbitrator unanimously and convey their decision to the Director of Arbitration in writing not later than 5 days after the Director of Arbitration's notice to disqualify.

(b) Removal by Director. After the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.

(c) Standards for Deciding Challenges for Cause. The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of being reasonable of demonstration, rather than remote or speculative.

(d) Vacancies. In the event that any arbitrator, after the beginning of the first hearing session and prior to the rendition of the award, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of such resignation, death, withdrawal, disqualification, or other inability. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator pursuant to Rule 18.11, as well as any other information disclosed pursuant to Rule 18.13. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Rule 18.12, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 18.12.



**Rule 18.15. Initiation of Proceedings**

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) **Statement of Claim.** The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim, together with documents in support of the Claim, and the required non-refundable filing fee and hearing session deposit set forth under Rule 18.33, Schedule of Fees. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and for each arbitrator(s). The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) **Service and Filing with the Director of Arbitration.** For purposes of the Code of Arbitration Procedure, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service, or in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(c) **Answer-Defenses, Counterclaims and/or Cross-Claims.**

(1) Within twenty (20) business days from receipt of the Statement of Claim, the Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any forum fees required under Rule 18.33. The Answer shall specify all available defenses and relevant facts that will be relied upon at hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based upon any existing dispute, claim or controversy subject to arbitration under this Code.

(2)

(i) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third-Party Respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(ii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third-Party Respondent who fails to specify all available defenses and relevant facts in such party's Answer, may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting the facts or defenses not included in such party's Answer at the hearing.

(iii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third-Party Respondent who fails to file an Answer within twenty (20) business days from receipt of service of a claim, unless the time to Answer has been extended pursuant to paragraph (c)(5), may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing.

(3) Respondent(s) shall serve each party with a copy of any Third-Party Claim. The Third-Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any forum fees required under Rule 18.33. Third-Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in (c)(1) and (2) above.

(4) The Claimant shall serve each party with a reply to a Counterclaim within ten (10) business days of the receipt of an Answer containing a Counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

(5) The Director of Arbitration may extend any time period in this section whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply or Third-Party pleading.

(d) Joining and Consolidation—Multiple Parties.

(1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to or defend all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

(2) In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.

(3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

(4) Further determinations with respect to joining, consolidation and multiple parties under this subsection may be made by the arbitration panel and shall be deemed final.

#### Rule 18.16. Designation of Time and Place of Hearings

Unless the law directs otherwise, the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight (8) business days prior to the date fixed for the hearing by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

#### 18.17. Representation by Counsel

All parties shall have the right to representation by counsel at any stage of the proceedings.

#### 18.18. Attendance at Hearings

The attendance or presence of all persons at hearings including witnesses shall be determined by the arbitrators. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.

#### Rule 18.19. Failure to Appear

If any of the parties, after due notice, fails to appear at a hearing or at any continuation of a hearing, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party has entered an appearance in the matter submitted.

#### Rule 18.20. Adjournments

(a) The arbitrators may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) Unless waived by the Director of Arbitration, a party requesting an adjournment after arbitrators have been appointed shall deposit, with the request for an adjournment, a fee equal to the initial deposit of hearing deposit fees for the first adjournment and twice the initial deposit of hearing deposit fees, not to exceed \$1,000, for a second or subsequent adjournment requested by that party. If the adjournment is not granted, the deposit shall be refunded. If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to either party. The Claimant may then file a new arbitration.

#### Rule 18.21. Acknowledgement of Pleadings

The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

#### Rule 18.22. General Provisions Governing Pre-Hearing Proceeding

(a) Requests for Documents and Information. The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) Document Production and Information Exchange.

(1) Any party may serve a written request for information or documents (“information request”) upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

(3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under paragraph (d) of this Rule or to a selected arbitrator under paragraph (e) of this Rule.

(c) Pre-Hearing Exchange.

At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession that they intend to present at the hearing. The parties may provide a list of those documents that have already been produced pursuant to the other provisions of Rule 18.22 in lieu of the actual documents. A list of such documents served under this paragraph shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. In addition, at least twenty (20) calendar days prior to the first scheduled hearing date, the parties also shall serve on each other a list identifying witnesses they intend to present at the hearing by name, address and business affiliation. A copy of the list of witnesses shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. The arbitrator(s) may exclude from the arbitration any documents not exchanged or identified or witnesses not identified in accordance with the requirements of this paragraph. This paragraph does not require service of copies of documents or identification of witnesses that parties may use for cross-examination or rebuttal.

(d) Pre-Hearing Conference.

(1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issues that relate to the pre-hearing process or to the hearing, including but not limited to, the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of facts, identification and briefing of contested issues, and any other matters that will expedite the arbitration proceedings.

(2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single member of the Arbitration Panel for decision.

(e) Decisions by Selected Arbitrator.

The Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this Rule. In matters involving public customers, such single arbitrator shall be a public arbitrator, except the arbitrator may be either public or industry when the public customer has requested a panel consisting of a majority from the securities industry. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines for compliance and issue any other ruling which will expedite the arbitration proceeding or is necessary to permit any party to develop fully its case. Decisions under this paragraph shall be made upon the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this paragraph to the full panel.

(f) Subpoena.

The arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. However, the parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

(g) Power to Direct Appearances and Production of Documents.

The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any Trading Permit Holder or person employed by or associated with any Trading Permit Holder or TPH organization of the Exchange, and/or the production of any records in the possession or control of such persons, Trading Permit Holders or TPH organizations. Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

Rule 18.23. Power to Direct Appearances

Reserved.

Rule 18.24. Evidence

The arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.

**Rule 18.25. Interpretation of Code and Enforcement of Arbitrator Rulings**

The arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

**Rule 18.26. Determinations of Arbitrators**

All rulings and determinations of the panel shall be by a majority of the arbitrators.

**Rule 18.27. Record of Proceedings**

A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

**Rule 18.28. Oaths of the Arbitrators and Witnesses**

Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.

**Rule 18.29. Amendments**

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties a copy of the new or different pleading in accordance with the provisions set forth in Rule 18.15(b). The other parties may, within ten (10) business days from the receipt of service, file a response with the Director of Arbitration, with sufficient additional copies for each arbitrator, in accordance with Rule 18.15(b).

(b) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

**Rule 18.30. Reopening of Hearings**

Where permitted by law, the hearings may be reopened by the arbitrators on their own motion or in the discretion of the arbitrators upon application of a party at any time before the award is rendered.

**Rule 18.31. Awards**

- (a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.
- (b) Unless the law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal.
- (c) The Director of Arbitration shall endeavor to serve a copy of the award:
  - (i) by registered or certified mail upon all parties, or their counsel, at the address of record;
  - (ii) by personally serving the award upon the parties; or
  - (iii) by filing or delivering the award in such manner as may be authorized by law.
- (d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.
- (e) The award shall contain the names of the parties, the name(s) of counsel, if any, a summary of the issues, including the type(s) of any security or product, in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the date that the claim was filed and the award rendered, the numbers and date of hearing sessions, the locations of the hearing(s) and the signatures of the arbitrators concurring in the award.
- (f) The awards shall be made publicly available provided, however, that the name of any customer party to the arbitration will not be publicly available if he or she so requests in writing.
- (g) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If such a motion has been filed, either party may request the Chief Executive Officer or President to direct that the award be paid to an escrow account maintained by the Exchange. Such request shall be filed with the Secretary of the Exchange within thirty-five days of receipt of such award.
- (h) An award shall bear interest from the date of the award:
  - (i) if not paid within thirty (30) days of receipt;
  - (ii) if the award is the subject of a motion to vacate which is denied; or
  - (iii) as specified by the arbitrator(s) in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

#### Rule 18.32. Miscellaneous

This Code shall be deemed a part of and incorporated by reference in every duly-executed Submission Agreement which shall be binding on all parties.

Rule 18.33. Schedule of Fees

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Exchange in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per additional hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedule below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with a single arbitrator shall be the amount set forth in the schedules below.

(c) The arbitrator(s), in the award, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees are assessed to the parties on a per hearing session basis. The aggregate of the forum fee for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which cases hearing session fees shall be computed as provided in paragraph (d). The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.

If a customer is assessed forum fees in connection with a Trading Permit Holder claim, forum fees assessed against the customer shall be based on the hearing deposit required under the Trading Permit Holder claims schedule for the amount awarded to Trading Permit Holder parties to be paid by the customer and not based on the size of the Trading Permit Holder claim. No fees shall be assessed against a customer in connection with a Trading Permit Holder claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above.

Amounts deposited by a party as hearing deposits shall be applied against forum fees, if any.

In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 18.15(e), 18.20 and 18.27 and, unless applicable law directs otherwise, other costs and expenses of the parties. The arbitrator(s) shall determine by whom such costs shall be borne.

If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.

(d) For claims filed separately and subsequently joined or consolidated under Rule 18.15(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.



(e) If the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee will be \$250 and the hearing session deposit to be remitted by a party shall be \$600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed \$1,500.

(f) The Exchange shall retain the total initial hearing session amount deposited by all the parties in any matter submitted and settled or withdrawn within eight (8) business days of the first scheduled hearing session other than a pre-hearing conference.

(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 18.15(e), 18.20 and 18.27 based on hearing session(s) held and scheduled within eight (8) business days of the Exchange receiving notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(h) Schedule of Fees

For purposes of the schedule of fees the term claim includes Claims, Counterclaims, Third- Party Claims or Cross-Claims. Any such claim involving a customer and a Trading Permit Holder or person associated with a Trading Permit Holder is a customer claim. Any such claim submitted by a Trading Permit Holder or a person associated with a Trading Permit Holder against another Trading Permit Holder is a Trading Permit Holder claim.

**CUSTOMER CLAIM FEE SCHEDULE**

Amount of Dispute (Exclusive of Interest and Expenses)	Filing Fee	Pre-Hearing Conference Fee	Hearing Deposit Fee Per Session	
			Simplified	Hearing
\$1000 or less	\$15	\$15	\$15	\$15
\$1,001 to \$2,500	\$25	\$25	\$25	\$25
\$2,501 to \$5,000	\$50	\$100	\$75	\$100
\$5,001 to \$10,000	\$75	\$200	\$75	\$200
\$10,001 to \$30,000	\$100	\$300	N/A	\$400
\$30,001 to \$50,000	\$120	\$300	N/A	\$400
\$50,001 to \$100,000	\$150	\$300	N/A	\$500

\$100,000 to \$500,000	\$200	\$300	N/A	\$750
\$500,000 to \$5,000,000	\$250	\$300	N/A	\$1,000
Over \$5,000,000	\$300	\$300	N/A	\$1,500

### TRADING PERMIT HOLDER CLAIM FEE SCHEDULE

Amount of Dispute (Exclusive of Interest and Expenses)	Filing Fee	Pre-Hearing Conference Fee	Hearing Deposit Fee Per Session
\$1000 or less	\$75	\$15	\$600
\$1,001 to \$2,500	\$75	\$25	\$600
\$2,501 to \$5,000	\$100	\$100	\$600
\$5,001 to \$10,000	\$500	\$200	\$600
\$10,001 to \$30,000	\$500	\$300	\$600
\$30,001 to \$50,000	\$500	\$300	\$600
\$50,001 to \$100,000	\$500	\$300	\$600
\$100,000 to \$500,000	\$750	\$500	\$750
\$500,000 to \$1,000,000	\$1,000	\$500	\$1,000
Over \$1,000,000	\$1,500	\$500	\$1,500

Rule 18.34. Payment for Floor Brokerage Services

Moved to Rule 18.2.

Rule 18.35. Requirements when Using Pre-Dispute Arbitration Agreements with Customers

(a) Any pre-dispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

- (1) Arbitration is final and binding on the parties.
  - (2) The parties are waiving their right to seek remedies in court, including the right to jury trial.
  - (3) Pre-arbitration discovery is generally more limited than and different from court proceedings.
  - (4) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
  - (5) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- (b) Immediately preceding the signature line, there shall be a statement which shall be highlighted that the agreement contains a pre-dispute arbitration clause. This statement shall also indicate at what page and paragraph the arbitration clause is located.
- (c) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.
- (d) No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.
- (e) All agreements shall include a statement that:
- “No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:
- (i) the class certification is denied; or
  - (ii) the class is decertified; or
  - (iii) the customer is excluded from the class by the court.

Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

- (f) The requirements of paragraphs (a) through (d) of this Rule shall apply only to new agreements signed by an existing or new customer of a Trading Permit Holder or TPH organization after September 7, 1989. The requirements of paragraph (e) shall apply only to new agreements signed by an existing or new customer of a Trading Permit Holder or TPH organization after January 23, 1996.

Rule 18.36. Reserved

Reserved.

Rule 18.37. Failure to Honor Award

Any Trading Permit Holder, person associated with a Trading Permit Holder, or former Trading Permit Holder or associated person, who fails to honor an award of arbitrators appointed in accordance with these rules shall be subject to disciplinary proceedings in accordance with Chapter 17 of Exchange Rules.]

## EXHIBIT 5B

(additions are underlined; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe Exchange, Inc.

(Effective October 7, 2019)

\* \* \* \* \*

**CHAPTER 14. ARBITRATION****Rule 14.1. Matters Subject to Arbitration**

(a) Any dispute, claim or controversy, arising between parties who are Trading Permit Holders\* or persons associated with a Trading Permit Holder which arises out of the Exchange business of such parties shall, at the request of any such party and the approval of the Exchange's Director of Arbitration, be submitted for arbitration in accordance with these rules.

(b) Any dispute, claim or controversy, arising between a non-Trading Permit Holder and a Trading Permit Holder or persons associated with a Trading Permit Holder which arises out of the Exchange business of such Trading Permit Holder or a person associated with a Trading Permit Holder shall, at the request of such non-Trading Permit Holder and the approval of the Exchange's Director of Arbitration, be submitted for arbitration in accordance with these rules.

(c) If a party to a dispute, in an Answer, Reply, or other written response to a request for arbitration, has challenged the appropriateness of submitting a matter to arbitration under this Chapter, the Director of Arbitration shall serve upon the parties written notice of his decision to accept or reject the matter for arbitration. The decision by the Director of Arbitration to accept or reject a matter for arbitration shall, at the request of any party to the dispute, be subject to review by the Board of Directors or a panel of the Board composed of at least three Directors. Requests for review must be submitted in writing to the Secretary of the Exchange within ten calendar days from receipt of notice of the Director of Arbitration's decision.

(d) The arbitration provisions of this Chapter shall not constitute a prospective waiver of any right of action that may arise under the federal securities laws.

**Interpretations and Policies**

.01 For purposes of this Chapter, the terms Trading Permit Holder and a person associated with a Trading Permit Holder shall be deemed to encompass those persons who were former (a) Trading Permit Holders, (b) Exchange members, or persons treated the same as members, under the Constitution and Rules of the Exchange in effect immediately prior to the Restructuring Transaction, (c) persons associated with a Trading Permit Holder, or (d) persons associated with a member, or a person treated the same as a member, under the Constitution and Rules of the Exchange in effect immediately prior to the Restructuring Transaction.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a Trading Permit Holder or a person associated with a Trading Permit Holder to fail to submit a dispute for arbitration on demand under the provisions of this Chapter, or to fail to provide any document in his possession or control as directed pursuant to the provisions of this Chapter or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Chapter where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

.03

(a) For the purposes of Rule 14.1(a), the term “Exchange business” does not include a dispute, claim or controversy alleging employment discrimination, including sexual harassment.

(b) Notwithstanding the policy set forth in paragraph (a), the Exchange may make its arbitration facilities available for the resolution of employment discrimination, including sexual harassment, claims if the parties mutually agree to arbitrate the claim after the claim has arisen. Any determination pursuant to this paragraph will be made by the Director of Arbitration.

.04 Rules 14.1 through 14.36, with the exception of Rule 14.2, apply only to arbitrations filed prior to April 30, 2015 and are otherwise of no force or effect. All arbitrations filed prior to April 30, 2015 shall, until concluded, continue to be administered by the Exchange.

\* The term “Trading Permit Holder” as defined in the Bylaws and used in the Rules includes a nominee of a TPH organization unless the context otherwise requires.

#### **Rule 14.2. FINRA Jurisdiction over Arbitrations against Trading Permit Holders**

(a) General. The Rule 12000 Series and Rule 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes) (the “FINRA Code of Arbitration”), as the same may be in effect from time to time, shall govern Exchange arbitrations except as may be specified in this Rule 14.2. Definitions in the FINRA Code of Arbitration shall have the same meaning as that prescribed therein, and procedures contained in the FINRA Code of Arbitration shall have the same application as toward Exchange arbitrations.

(b) Jurisdiction. As of [insert Effective Date], any dispute, claim or controversy arising out of or in connection with the Exchange business of any Trading Permit Holder or person associated with a Trading Permit Holder may be arbitrated under this Rule 14.2 except that (1) a dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute may only be arbitrated if the parties have agreed to arbitrate it after the dispute arose; and (2) any type of dispute, claim, or controversy that is not permitted to be arbitrated under the FINRA Code of Arbitration, such as class action claims, shall not be eligible for arbitration under this Rule 14.2.

(c) Predispute Arbitration Agreements. The requirements of FINRA Rule 2268 shall apply to predispute arbitration agreements between Trading Permit Holders and their customers.

(d) Referrals. If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Exchange for disciplinary investigation pursuant to Rule 12104 or Rule 13104 (as applicable) of the FINRA Code of Arbitration.

(e) Payment of Awards. Any Trading Permit Holder, or person associated of a Trading Permit Holder, who fails to honor an award of arbitrators appointed in accordance with Rule 14.2 shall be subject to disciplinary proceedings in accordance with Chapter 13 of Exchange Rules.

(f) Other Exchange Actions. The submission of any matter to arbitration under this Chapter shall in no way limit or preclude any right, action or determination by the Exchange which it would otherwise be authorized to adopt, administer or enforce.

### **Interpretations and Policies**

.01 For purposes of this Rule 14.2, the terms Trading Permit Holder and a person associated with a Trading Permit Holder shall be deemed to encompass those persons who were former Trading Permit Holders and former persons associated with a Trading Permit Holder.

### **Rule 14.3. Procedures in Trading Permit Holder Controversies**

The following procedures shall apply in any dispute, claim or controversy between parties who are Trading Permit Holders or persons associated with a Trading Permit Holder which is submitted for arbitration pursuant to Rule 14.1(a):

(a) Selection of Arbitrators. The arbitration panel shall be selected by the Director of Arbitration and shall consist of not less than three arbitrators. The arbitrators shall be selected from the Arbitration Committee or, if necessary, from a roster provided by FINRA of qualified non-public arbitrators and/or non-public chairperson-qualified arbitrators, as defined by FINRA's rules governing arbitration industry disputes.

(b) Challenges. Each party to the dispute may peremptorily challenge any person appointed to the arbitration panel. There shall be no fixed limit on the number of peremptory challenges by a party; however, no party may assert an unreasonable number of challenges. The Director of Arbitration shall deny peremptory challenges if both the Director of Arbitration and the Chairman of the Arbitration Committee agree that the number of such challenges by a party has been unreasonable. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Rule 14.13 or Rule 14.24(d) or (e), whichever comes first. There shall be unlimited challenges for cause.

(c) In any arbitration concerning the alleged failure to pay for floor brokerage services, the following additional provisions shall apply:

(1) In order to commence such a proceeding, the claimant shall include with his statement of claim the following: (A) copies of billing copies of order tickets relating to the unpaid brokerage; (B) copies of monthly bills reflecting the unpaid brokerage; (C) copies of evidence reflecting the claimant's post-billing efforts to collect the unpaid brokerage; and (D) a certification of any efforts, not reflected in writing, made to collect the unpaid brokerage.

(2) If the arbitrators find that the respondent knowingly and purposefully failed to pay for floor brokerage services, and such failure was without sufficient justification or excuse, then the arbitrators have the authority to award up to two times the amount of the brokerage bill, in addition, to whatever determinations the arbitrators may ordinarily make concerning arbitration fees, interest, and attorney's fees or other expenses.

(d) General. Subject to the foregoing provisions of this Rule, the other Rules of Chapter 14 shall apply to arbitrations between Trading Permit Holders except for those provisions specifically applicable to arbitrations involving public customers.

### **Interpretations and Policies**

.01 In any arbitration concerning the alleged failure to honor a trade, each party to the arbitration shall promptly provide copies of all documents filed or received in the arbitration by that party to the Clearing Trading Permit Holder(s) that guaranteed that party's Exchange transactions when the alleged trade took place.

### **Uniform Arbitration Code**

#### **Rule 14.4. Arbitration**

(a) Any dispute, claim or controversy between a customer or non-Trading Permit Holder and a Trading Permit Holder and/or associated person arising in connection with the business of such Trading Permit Holder and/or associated person in connection with his activities as an associated person shall be arbitrated under the Rules of the Exchange, as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non- Trading Permit Holder.

(b) Under this Code, the Exchange shall have the right to decline the use of its arbitration facilities in any dispute, claim or controversy, where—having due regard for the purposes of the Exchange and the intent of this Code—such dispute, claim or controversy is not a proper subject matter for arbitration.

(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by the Director of Arbitration.

### **Interpretations and Policies**

.01 Any determination pursuant to Rule 14.4(b) shall be made by the Exchange's Director of Arbitration and shall be subject to review as provided in Rule 14.1(c).

#### **Rule 14.5. Class Action Claims**



(a) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Exchange.

(b)

(1) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Exchange if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self regulatory organization for a classwide arbitration. However, such claims shall be eligible for arbitration in accordance with Rule 14.1 or 14.4 or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(2) Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrator(s) appointed in accordance with Rule 14.6 or Rule 14.12, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten (10) business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrator(s).

(c) No Trading Permit Holder and/or associated person shall seek to enforce any agreement to arbitrate against a customer, other Trading Permit Holder or persons associated with a Trading Permit Holder who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until:

(1) the class certification is denied;

(2) the class is decertified;

(3) the customer, other Trading Permit Holder or person associated with a Trading Permit Holder is excluded from the class by the court; or

(4) the customer, other Trading Permit Holder or person associated with a Trading Permit Holder elects not to participate in the putative or certified class action, or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(d) No Trading Permit Holder and/or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.

#### **Rule 14.6. Simplified Arbitration**

(a) Any dispute, claim or controversy, arising between a public customer(s) and an associated person or a Trading Permit Holder subject to arbitration under this Code involving a dollar amount not exceeding \$10,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the claim. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether a hearing is demanded.

(c) The Claimant shall pay a non-refundable filing fee and remit a hearing deposit as specified in Rule 14.34, Schedule of Fees, upon filing of the Submission Agreement. The final disposition of the fee or deposit shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any forum fees required under Rule 14.34, Schedule of Fees. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third- Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third-Party Claim and a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$10,000, the arbitrator may refer the Claim, Counterclaim and/or Third-Party Claim, if any, to a panel of no less than three (3) arbitrators in accordance with Rule 14.12 of this Code, or he may dismiss the Counterclaim and/or Third-Party Claim, without prejudice to the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counterclaim and/or Third-Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 14.34.

(e) All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrators, a copy of the Answer, Counterclaim, Third-Party Claim or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either:

(1) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrators, a Reply to any Counterclaim, or

(2) if the amount of the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings will be discontinued without prejudice to the rights of the parties.

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a

hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h)

(1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(2) If a hearing is demanded or consented to in accordance with paragraph (f) of this Rule, the General Provisions Governing a Pre-Hearing proceeding under Rule 14.24 shall apply.

(3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its requests for document production on all parties. Any response or objection to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the request for production. The selected arbitrator shall resolve all requests under this paragraph on the papers submitted.

(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel that shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(k) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

(l) Except as otherwise provided herein, the general arbitration rules of the Exchange shall be applicable to proceedings instituted under this Rule.

### **Hearing Requirements**

#### **Rule 14.7. Waiver of Hearing**

(a) Any dispute, claim or controversy, except as provided in Rule 14.6 (Simplified Arbitration), shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

#### **Rule 14.8. Time Limitation Upon Submission**

No dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

**Rule 14.9. Dismissal or Termination of Proceedings**

At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to the remedies provided by law. The arbitrators shall upon the joint request of the parties dismiss the proceeding.

**Rule 14.10. Settlements**

All settlements upon any matter submitted shall be at the election of the parties.

**Rule 14.11. Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration**

(a) Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings shall be tolled when a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Exchange shall retain jurisdiction upon the matter submitted.

(b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.

**Rule 14.12. Designation of Number of Arbitrators**

(a)

(1) all arbitration matters involving public customers and non-Trading Permit Holders where the amount in controversy exceeds \$10,000 or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel that shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer or non-Trading Permit Holder requests a panel consisting of at least a majority from the securities industry.

(2) An arbitrator will be deemed as being from the securities industry if he or she:

(A) is a person associated with a Trading Permit Holder, broker/dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser; or

(B) has been associated with any of the above within the past five (5) years; or

(C) is retired from or spent a substantial part of his or her business career in any of the above; or

(D) is an attorney, accountant or other professional who has devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

(E) is an individual who is registered under the Commodities Exchange Act or is a member of a registered futures association or any Commodities Exchange or is associated with any such person(s).

(3) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or investment adviser.

(b) *Composition of Panels.* The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of each panel.

(c) *Arbitrator Restrictions.* The following restrictions shall apply to persons who serve on the Arbitration Committee.

(1) No member of the Arbitration Committee shall represent a party as counsel in any dispute, claim or controversy submitted for Cboe Options arbitration ("Cboe Options Arbitration") while that member is serving on the Arbitration Committee and for a period of six months after the date on which that member ceases being a member of the Arbitration Committee and,

(2) if a Committee member is appointed as an arbitrator in a pending Cboe Options Arbitration ("Pending Cboe Options Arbitration") and subsequently ceases being a member of the Committee, but continues to serve as an arbitrator in the Pending Cboe Options Arbitration, that person cannot represent a party as counsel in a separate Cboe Options Arbitration until he or she has ceased serving as an arbitrator in the Pending Cboe Options Arbitration.

### **Guidelines for Classification of Arbitrators**

#### **These Guidelines will be Used by the Cboe Exchange, Inc. in Applying Rule 14.12.**

In order to insure continued investor confidence in the arbitration process, the Cboe Exchange, Inc. has adopted the following policies with regard to the classification of securities industry and public arbitrators and to the exercise of challenges for cause:

(a) Individuals with close securities industry ties such as attorneys, accountants or other professionals who routinely represent industry firms or individuals, will either be reclassified as industry arbitrators or not be used.

(b) Individuals who have spent a substantial part of their business careers in the securities industry shall always be classified as industry arbitrators.

(c) Individuals who have spent a relatively minor portion of their career in the securities industry shall not be classified as public arbitrators until at least five (5) years have elapsed from the date of their last industry affiliation. All such past affiliations shall be disclosed and challenges for cause based upon such past affiliations shall be sustained.

(d) Close family relationships with broker/dealers shall be disclosed and challenges for cause based on such relationships shall be honored.

(e) Attorneys, accountants and other professionals whose firms have close securities industry ties will still be classified as public arbitrators provided the attorney or other professional does not routinely represent industry firms or individuals. Challenges for cause based on such industry ties will be honored.

(f) All arbitrators shall read and become familiar with the Code of Ethics for Arbitrators developed by the American Bar Association and the American Arbitration Association.

(g) Any close question on arbitrator classification or on challenges for cause shall be decided in favor of public customer.

(h) Spouses of securities industry personnel may not serve as public arbitrators.

-----

#### **Rule 14.13. Notice of Selection of Arbitrators**

The Director of Arbitration shall inform the parties of the names and employment histories of the arbitrators for the past ten (10) years, as well as information disclosed pursuant to Rule 14.15, at least eight (8) business days prior to the date fixed for the initial hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that any arbitrator, after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties of the name and employment history of the replacement arbitrator for the past ten (10) years, as well as information disclosed pursuant to Rule 14.15, as soon as possible. A party may make further inquiry of the Director of Arbitration concerning the background of replacement arbitrators and within the time remaining prior to the first hearing session or the five (5) day period provided under Rule 14.14, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 14.14.

#### **Rule 14.14. Challenges**

(a) In any arbitration proceeding, each party shall have the right to one (1) peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Claimants shall have one (1) peremptory challenge, the Respondents shall have one (1) peremptory challenge and the Third-Party Respondents shall have one (1) peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Rule 14.13 or Rule 14.24(d) or (e), whichever comes first.

(b) There shall be unlimited challenges for cause.

#### **Rule 14.15. Disclosures Required of Arbitrators**

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration.

(2) Any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in Paragraph (a) above.

(c) The obligation to disclose interests, relationships, or circumstances which might preclude an arbitrator from rendering an objective and impartial determination described in Subsection (a) hereof is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances which arise, or which are recalled or discovered.

(d) *Removal by the Director.*

(1) The Director of Arbitration may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator based on information not known to the parties when the arbitrator was selected.

(3) The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request that the arbitrator

is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(4) The Director of Arbitration shall inform the parties to an arbitration proceeding of any information disclosed to the Director of Arbitration under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director of Arbitration removes the arbitrator.

#### **Rule 14.16. Disqualification or Other Disability of Arbitrators**

(a) *Disqualification by Director of Arbitration Due to Conflict of Interest or Bias.* After the appointment of an arbitrator and prior to the beginning of (1) the first pre-hearing conference or (2) the first hearing session, whichever is earlier, if the Director of Arbitration or a party objects, pursuant to Rule 14.14(b), to the continued service of an arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director of Arbitration determines that an arbitrator should be disqualified then the Director of Arbitration will notify both parties of the decision. The parties will have 5 days to retain the arbitrator, notwithstanding the Director of Arbitration's decision to disqualify the arbitrator. The parties must agree to retain the arbitrator unanimously and convey their decision to the Director of Arbitration in writing not later than 5 days after the Director of Arbitration's notice to disqualify.

(b) *Removal by Director.* After the beginning of (1) the first pre-hearing conference or (2) the first hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 14.15 and that was not previously disclosed.

(c) *Standards for Deciding Challenges for Cause.* The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of being reasonable of demonstration, rather than remote or speculative.

(d) *Vacancies.* In the event that any arbitrator, after the beginning of the first hearing session and prior to the rendition of the award, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of such resignation, death, withdrawal, disqualification, or other inability. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator pursuant to Rule 14.13, as well as any other information disclosed pursuant to Rule 14.15. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Rule 14.14, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 14.14.



**Rule 14.17. Initiation of Proceedings**

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Statement of Claim. The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim, together with documents in support of the Claim, and the required non-refundable filing fee and hearing session deposit set forth under Rule 14.34, Schedule of Fees. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and for each arbitrator(s). The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) Service and Filing with the Director of Arbitration. For purposes of the Code of Arbitration Procedure, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service, or in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(c) Answer-Defenses, Counterclaims and/or Cross-Claims.

(1) Within twenty (20) business days from receipt of the Statement of Claim, the Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any forum fees required under Rule 14.34. The Answer shall specify all available defenses and relevant facts that will be relied upon at hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based upon any existing dispute, claim or controversy subject to arbitration under this Code.

(2)

(A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third- Party Respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(B) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third- Party Respondent who fails to specify all available defenses and relevant facts in such party's Answer, may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting the facts or defenses not included in such party's Answer at the hearing.

(C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third- Party Respondent who fails to file an Answer within twenty (20) business days from receipt of service of a claim, unless the time to Answer has been extended pursuant to paragraph (c)(5), may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing.

(3) Respondent(s) shall serve each party with a copy of any Third-Party Claim. The Third-Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any forum fees required under Rule 14.34. Third-Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in (c)(1) and (2) above.

(4) The Claimant shall serve each party with a reply to a Counterclaim within ten (10) business days of the receipt of an Answer containing a Counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

(5) The Director of Arbitration may extend any time period in this section whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply or Third-Party pleading.

(d) *Joining and Consolidation—Multiple Parties.*

(1) *Permissive Joinder.* All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to or defend all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

(2) In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.

(3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

(4) Further determinations with respect to joining, consolidation and multiple parties under this subsection may be made by the arbitration panel and shall be deemed final.

**Rule 14.18. Designation of Time and Place of Hearings**

Unless the law directs otherwise, the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight (8) business days prior to the date fixed for the hearing by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

**Rule 14.19. Representation by Counsel**

All parties shall have the right to representation by counsel at any stage of the proceedings.

**Rule 14.20. Attendance at Hearings**

The attendance or presence of all persons at hearings including witnesses shall be determined by the arbitrators. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.

**Rule 14.21. Failure to Appear**

If any of the parties, after due notice, fails to appear at a hearing or at any continuation of a hearing, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party has entered an appearance in the matter submitted.

**Rule 14.22. Adjournments**

(a) The arbitrators may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) Unless waived by the Director of Arbitration, a party requesting an adjournment after arbitrators have been appointed shall deposit, with the request for an adjournment, a fee equal to the initial deposit of hearing deposit fees for the first adjournment and twice the initial deposit of hearing deposit fees, not to exceed \$1,000, for a second or subsequent adjournment requested by that party. If the adjournment is not granted, the deposit shall be refunded. If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to either party. The Claimant may then file a new arbitration.

**Rule 14.23. Acknowledgement of Pleadings**

The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

**Rule 14.24. General Provisions Governing Pre-Hearing Proceeding**

(a) Requests for Documents and Information. The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) Document Production and Information Exchange.

(1) Any party may serve a written request for information or documents (“information request”) upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

(3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under paragraph (d) of this Rule or to a selected arbitrator under paragraph (e) of this Rule.

(c) Pre-Hearing Exchange. At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession that they intend to present at the hearing. The parties may provide a list of those documents that have already been produced pursuant to the other provisions of Rule 14.24 in lieu of the actual documents. A list of such documents served under this paragraph shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. In addition, at least twenty (20) calendar days prior to the first scheduled hearing date, the parties also shall serve on each other a list identifying witnesses they intend to present at the hearing by name, address and business affiliation. A copy of the list of witnesses shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. The arbitrator(s) may exclude from the arbitration any documents not exchanged or identified or witnesses not identified in accordance with the requirements of this paragraph. This paragraph does not require service of copies of documents or identification of witnesses that parties may use for cross-examination or rebuttal.

(d) Pre-Hearing Conference.

(1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-

hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issues that relate to the pre-hearing process or to the hearing, including but not limited to, the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of facts, identification and briefing of contested issues, and any other matters that will expedite the arbitration proceedings.

(2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single member of the Arbitration Panel for decision.

(e) *Decisions by Selected Arbitrator.* The Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this Rule. In matters involving public customers, such single arbitrator shall be a public arbitrator, except the arbitrator may be either public or industry when the public customer has requested a panel consisting of a majority from the securities industry. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines for compliance and issue any other ruling which will expedite the arbitration proceeding or is necessary to permit any party to develop fully its case. Decisions under this paragraph shall be made upon the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this paragraph to the full panel.

(f) *Subpoena.* The arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. However, the parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

(g) *Power to Direct Appearances and Production of Documents.* The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any Trading Permit Holder or person employed by or associated with any Trading Permit Holder or TPH organization of the Exchange, and/or the production of any records in the possession or control of such persons, Trading Permit Holders or TPH organizations. Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

#### **Rule 14.25. Evidence**

The arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.

#### **Rule 14.26. Interpretation of Code and Enforcement of Arbitrator Rulings**

The arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

#### **Rule 14.27. Determinations of Arbitrators**

All rulings and determinations of the panel shall be by a majority of the arbitrators.

**Rule 14.28. Record of Proceedings**

A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

**Rule 14.29. Oaths of the Arbitrators and Witnesses**

Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.

**Rule 14.30. Amendments**

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties a copy of the new or different pleading in accordance with the provisions set forth in Rule 14.17(b). The other parties may, within ten (10) business days from the receipt of service, file a response with the Director of Arbitration, with sufficient additional copies for each arbitrator, in accordance with Rule 14.17(b).

(b) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

**Rule 14.31. Reopening of Hearings**

Where permitted by law, the hearings may be reopened by the arbitrators on their own motion or in the discretion of the arbitrators upon application of a party at any time before the award is rendered.

**Rule 14.32. Awards**

(a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal.

(c) The Director of Arbitration shall endeavor to serve a copy of the award:

- (1) by registered or certified mail upon all parties, or their counsel, at the address of record;
- (2) by personally serving the award upon the parties; or
- (3) by filing or delivering the award in such manner as may be authorized by law.

(d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(e) The award shall contain the names of the parties, the name(s) of counsel, if any, a summary of the issues, including the type(s) of any security or product, in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the date that the claim was filed and the award rendered, the numbers and date of hearing sessions, the locations of the hearing(s) and the signatures of the arbitrators concurring in the award.

(f) The awards shall be made publicly available provided, however, that the name of any customer party to the arbitration will not be publicly available if he or she so requests in writing.

(g) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If such a motion has been filed, either party may request the Chief Executive Officer or President to direct that the award be paid to an escrow account maintained by the Exchange. Such request shall be filed with the Secretary of the Exchange within thirty-five days of receipt of such award.

(h) An award shall bear interest from the date of the award:

(1) if not paid within thirty (30) days of receipt;

(2) if the award is the subject of a motion to vacate which is denied; or

(3) as specified by the arbitrator(s) in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

#### **Rule 14.33. Miscellaneous**

This Code shall be deemed a part of and incorporated by reference in every duly-executed Submission Agreement which shall be binding on all parties.

#### **Rule 14.34. Schedule of Fees**

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Exchange in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per additional hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedule below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with a single arbitrator shall be the amount set forth in the schedules below.

(c) The arbitrator(s), in the award, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees are assessed to the parties on a per hearing session basis. The aggregate of the forum fee for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which cases hearing session fees shall be computed as provided in paragraph (d). The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.

If a customer is assessed forum fees in connection with a Trading Permit Holder claim, forum fees assessed against the customer shall be based on the hearing deposit required under the Trading Permit Holder claims schedule for the amount awarded to Trading Permit Holder parties to be paid by the customer and not based on the size of the Trading Permit Holder claim. No fees shall be assessed against a customer in connection with a Trading Permit Holder claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above.

Amounts deposited by a party as hearing deposits shall be applied against forum fees, if any.

In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 14.17(e), 14.22 and 14.28 and, unless applicable law directs otherwise, other costs and expenses of the parties. The arbitrator(s) shall determine by whom such costs shall be borne.

If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.

(d) For claims filed separately and subsequently joined or consolidated under Rule 14.17(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.

(e) If the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee will be \$250 and the hearing session deposit to be remitted by a party shall be \$600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed \$1,500.

(f) The Exchange shall retain the total initial hearing session amount deposited by all the parties in any matter submitted and settled or withdrawn within eight (8) business days of the first scheduled hearing session other than a pre-hearing conference.

(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 14.17(e), 14.22 and 14.28 based on hearing session(s) held and scheduled within eight (8) business days of the Exchange receiving



notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(h) Schedule of Fees

For purposes of the schedule of fees the term claim includes Claims, Counterclaims, Third- Party Claims or Cross-Claims. Any such claim involving a customer and a Trading Permit Holder or person associated with a Trading Permit Holder is a customer claim. Any such claim submitted by a Trading Permit Holder or a person associated with a Trading Permit Holder against another Trading Permit Holder is a Trading Permit Holder claim.

**CUSTOMER CLAIM FEE SCHEDULE**

<u>Amount of Dispute (Exclusive of Interest and Expenses)</u>	<u>Filing Fee</u>	<u>Pre-Hearing Conference Fee</u>	<u>Hearing Deposit Fee Per Session</u>	
			<u>Simplified</u>	<u>Hearing</u>
<u>\$1000 or less</u>	<u>\$15</u>	<u>\$15</u>	<u>\$15</u>	<u>\$15</u>
<u>\$1,001 to \$2,500</u>	<u>\$25</u>	<u>\$25</u>	<u>\$25</u>	<u>\$25</u>
<u>\$2,501 to \$5,000</u>	<u>\$50</u>	<u>\$100</u>	<u>\$75</u>	<u>\$100</u>
<u>\$5,001 to \$10,000</u>	<u>\$75</u>	<u>\$200</u>	<u>\$75</u>	<u>\$200</u>
<u>\$10,001 to \$30,000</u>	<u>\$100</u>	<u>\$300</u>	<u>N/A</u>	<u>\$400</u>
<u>\$30,001 to \$50,000</u>	<u>\$120</u>	<u>\$300</u>	<u>N/A</u>	<u>\$400</u>
<u>\$50,001 to \$100,000</u>	<u>\$150</u>	<u>\$300</u>	<u>N/A</u>	<u>\$500</u>
<u>\$100,000 to \$500,000</u>	<u>\$200</u>	<u>\$300</u>	<u>N/A</u>	<u>\$750</u>
<u>\$500,000 to \$5,000,000</u>	<u>\$250</u>	<u>\$300</u>	<u>N/A</u>	<u>\$1,000</u>
<u>Over \$5,000,000</u>	<u>\$300</u>	<u>\$300</u>	<u>N/A</u>	<u>\$1,500</u>

**TRADING PERMIT HOLDER CLAIM FEE SCHEDULE**

<u>Amount of Dispute (Exclusive of Interest</u>		<u>Pre-Hearing Conference</u>	<u>Hearing Deposit</u>
---	--	-----------------------------------	------------------------

<u>and Expenses)</u>	<u>Filing Fee</u>	<u>Fee</u>	<u>Fee Per Session</u>
<u>\$1000 or less</u>	<u>\$75</u>	<u>\$15</u>	<u>\$600</u>
<u>\$1,001 to \$2,500</u>	<u>\$75</u>	<u>\$25</u>	<u>\$600</u>
<u>\$2,501 to \$5,000</u>	<u>\$100</u>	<u>\$100</u>	<u>\$600</u>
<u>\$5,001 to \$10,000</u>	<u>\$500</u>	<u>\$200</u>	<u>\$600</u>
<u>\$10,001 to \$30,000</u>	<u>\$500</u>	<u>\$300</u>	<u>\$600</u>
<u>\$30,001 to \$50,000</u>	<u>\$500</u>	<u>\$300</u>	<u>\$600</u>
<u>\$50,001 to \$100,000</u>	<u>\$500</u>	<u>\$300</u>	<u>\$600</u>
<u>\$100,000 to \$500,000</u>	<u>\$750</u>	<u>\$500</u>	<u>\$750</u>
<u>\$500,000</u> to <u>\$1,000,000</u>	<u>\$1,000</u>	<u>\$500</u>	<u>\$1,000</u>
<u>Over \$1,000,000</u>	<u>\$1,500</u>	<u>\$500</u>	<u>\$1,500</u>

**Rule 14.35. Requirements When Using Pre-Dispute Arbitration Agreements with Customers**

(a) Any pre-dispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

(1) Arbitration is final and binding on the parties.

(2) The parties are waiving their right to seek remedies in court, including the right to jury trial.

(3) Pre-arbitration discovery is generally more limited than and different from court proceedings.

(4) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

(5) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(b) Immediately preceding the signature line, there shall be a statement which shall be highlighted that the agreement contains a pre-dispute arbitration clause. This statement shall also indicate at what page and paragraph the arbitration clause is located.

(c) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(d) No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.

(e) All agreements shall include a statement that:

“No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:

(1) the class certification is denied; or

(2) the class is decertified; or

(3) the customer is excluded from the class by the court.

Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

(f) The requirements of paragraphs (a) through (d) of this Rule shall apply only to new agreements signed by an existing or new customer of a Trading Permit Holder or TPH organization after September 7, 1989. The requirements of paragraph (e) shall apply only to new agreements signed by an existing or new customer of a Trading Permit Holder or TPH organization after January 23, 1996.

#### **Rule 14.36. Failure to Honor Award**

Any Trading Permit Holder, person associated with a Trading Permit Holder, or former Trading Permit Holder or associated person, who fails to honor an award of arbitrators appointed in accordance with these rules shall be subject to disciplinary proceedings in accordance with Chapter 13 of Exchange Rules.

\* \* \* \* \*