

**CHAPTER 11**

**DISCIPLINARY ACTIONS**

**PART A          DISCIPLINARY POWERS**

**11.01    General**

- (1) In this Chapter 11, “disciplinary proceedings” where the context permits include appeal proceedings under Rule 11.15.
- (2) Where the acts or omissions of a Registered Person, employee, agent or director of a Participant would have been subject to these Rules had such acts or omissions been committed by the Participant, then such acts or omissions are deemed to be committed by that Participant and disciplinary action may be taken against it.

**11.02    Disciplinary Powers**

The Exchange may exercise its disciplinary powers under this Rule 11.02 if the Participant or Registered Person is found to have breached any of these Rules and Directives. The Exchange’s disciplinary powers include the taking of one or more of the following actions:

- (a) reprimanding (publicly or privately) a Participant or Registered Person;
- (b) imposing a fine not exceeding RM1 million on a Participant or Registered Person;
- (c) suspending a Participant or Registered Person in accordance with the terms prescribed by the Exchange;
- (d) terminating participantship where the Participant will immediately cease to enjoy the privileges of participantship;
- (e) imposing any restriction or condition or both in relation to the breach committed or on activities that a Participant or Registered Person undertakes;
- (f) imposing one or more conditions for compliance including issuing a directive to take such steps to remedy or mitigate the breach, other than a directive to make restitution;
- (g) directing a Participant or Registered Person to take appropriate action against any of the employees or agents of the Participant or Registered Person if such a person caused the Participant or Registered Person to commit the breach;
- (h) ordering the Participant or Registered Person to liquidate such portion of the Participant’s Open Position on its Proprietary Account or Clients’ Accounts, or both;
- (i) ordering the Participant or Registered Person to transfer existing Open Positions to another Trading Participant or prescribing restrictions on positions;
- (j) striking off the Registered Person’s name from the relevant Register;
- (k) in respect of a breach of these Rules that relates to a function that has been outsourced, imposing any restriction or condition in relation to the breach committed or on the activities that a Participant or Registered Person undertakes;

- (l) mandating education, training or such other types of programme as the Exchange may determine to be undertaken or implemented by the Participant, its employees or Registered Person; or
- (m) any other action the Exchange considers appropriate, subject to consultation with the Commission.

**11.03 Procedures**

- (1) The Exchange will determine the procedures applicable to any disciplinary proceedings taken under this Chapter 11. Such procedures may vary to adapt to the circumstances of any particular case.
- (2) The Exchange is not bound by legal rules of evidence and procedure in any disciplinary proceedings under this Chapter 11.

**11.04 Agreed Settlement**

- (1) A Participant or Registered Person may, at any time before the Exchange makes a decision, propose a settlement of the disciplinary action by agreeing to a set of facts, liability or penalty with the Exchange.
- (2) The Exchange may reject, accept or vary the proposed settlement based on terms that the Exchange deems fit.
- (3) Where the Exchange accepts the proposed settlement, the agreed settlement will be recorded as a decision of the Exchange.
- (4) If the Exchange is not agreeable to the proposed settlement, the proceedings under Rule 11.09 will apply.

**11.05 Request for oral representations**

- (1) A Participant or Registered Person may request for an oral representation to make submissions or to procure the attendance of witnesses or legal representation at such oral representation for proceedings commenced against the Participant or Registered Person. Any such request must be submitted with the Response provided under Rule 11.10 or the Notice of Appeal stated in Rule 11.16.
- (2) The Exchange may, in its absolute discretion, allow or disallow any request made pursuant to Rule 11.05(1), upon such terms and conditions as the Exchange deems appropriate.

**11.06 Standard of proof**

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

**11.07 Other rights**

The exercise of powers in Rule 11.02 does not in any way prejudice the other rights of the Exchange against a Participant or Registered Person, or any other person to whom these Rules are directed.

PART B VIOLATIONS

11.08 Violation by Participants or Registered Persons

Any Participant or Registered Person who, in any circumstances, directly or indirectly:

- (a) commits a breach or violates any of these Rules;
- (b) is found by the Exchange to be guilty of misconduct;
- (c) fails to perform his duties efficiently, honestly or fairly;
- (d) knowingly acts as both buyer and seller in the same transaction except when permitted under the Rules;
- (e) manipulates prices or attempts to manipulate prices or to corner or attempt to corner any Contract in the Market;
- (f) violates any provision of the Clearing House Rules;
- (g) becomes insolvent;
- (h) being a Participant:
  - (i) after becoming aware of any inability on its part to comply with the minimum financial requirements as contained in these Rules, fails to notify the Exchange of such inability;
  - (ii) fails to submit its financial reporting statements or annual audited accounts as required by these Rules within the time prescribed for submission; or
  - (iii) provides false representation(s) to the Exchange or omits to provide any material information to the Exchange or both;
- (i) being a Registered Representative:
  - (i) without prejudice to the generality of the foregoing:
    - (aa) falsely declares authentication of an account opening application; or
    - (bb) without proper authority, makes use of another person's particulars of an account;
  - (ii) falsifies particulars of an account;
  - (iii) falsifies signature of a Client or any other forms of authorisation by the Client;
  - (iv) unlawfully transacts on another person's account;
  - (v) commits any act in breach of his fiduciary position in respect of the foregoing matters;
  - (vi) unlawfully delegates powers or assigns duties properly vested in him to unauthorised person or persons; or
  - (vii) applies any amount paid or securities deposited by a Client to any person not entitled to the same or for payment other than the said Client's trading account;

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- (j) knowingly disseminates false or misleading reports concerning market information or conditions that may affect the price of any Instrument;
- (k) trades or accepts margins during its insolvency or after its Capital Markets Services Licence has been revoked, suspended or lapsed;
- (l) permits the use of its facilities or participating privileges by a Participant or Client in a manner that impairs the dignity or degrades the good name of the Exchange, or creates a market or other situation detrimental to the Exchange, or effectuating manipulations or corners or attempting either or to itself do any of the foregoing;
- (m) commits an act, which is substantially detrimental to the interest of the Exchange or Exchange holding company and of its Participants or a Client of a Participant;
- (n) fails to comply with any of the Exchange's decisions, directives, rulings or guidelines (other than those guidelines which are expressed to be non-binding) made under these Rules or by the Exchange; or
- (o) circulates or aids in the circulation in any manner of rumours which cast doubt on the integrity of any Contract or underlying,

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

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**PART C      DISCIPLINARY PROCEEDINGS**

**11.09 Requisite Notice**

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

**11.10 Response to Requisite Notice**

The Participant or Registered Person may submit to the Exchange a written response to the Requisite Notice ("Response") within the time prescribed in the Requisite Notice.

**11.11 Notification of decision**

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

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**PART D            EXPEDITED PROCEEDINGS**

**11.12    Scope**

The Exchange may initiate expedited proceedings under this Rule 11.12 against a Participant or Registered Person against whom disciplinary action is proposed to be taken instead of the proceedings under Rule 11.09 in circumstances the Exchange deems fit, such as in respect of a breach of the Rules which does not typically attract a penalty beyond:

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

**11.13    Procedure**

- (1)     The Exchange will notify the Participant or Registered Person that the matter will be proceeded with by way of expedited proceedings. The notice will specify the breach and penalty imposed for the breach (“Determination”).
- (2)     The Participant or Registered Person must, within the time prescribed in the Determination, inform the Exchange in writing whether or not the Participant or Registered Person agrees with the Determination. A Participant or Registered Person is deemed to have agreed with the Determination if the Participant or Registered Person does not respond within the prescribed time.
- (3)     If the Participant or Registered Person agrees or is deemed to have agreed with the Determination, disciplinary action will be recorded as having been taken against the Participant or Registered Person on the date of the Participant’s or Registered Person’s agreement or upon expiry of the prescribed time.
- (4)     If the Participant or Registered Person agrees or is deemed to have agreed with the Determination, any fine imposed as a penalty for the breach must be paid:
  - (a)     upon the Participant or Registered Person informing the Exchange of his agreement with the Determination; or
  - (b)     within the time prescribed in the Determination,as the case may be.
- (5)     If the Participant or Registered Person does not agree with the Determination, the matter will proceed under Rule 11.09. The Participant or Registered Person may, within the time prescribed in the Determination, submit a written response to the Determination as if the Determination is a Requisite Notice under Rule 11.09. In deliberating the matter under Rule 11.09, the Exchange is not bound by the Determination and may impose a higher penalty based on the facts or evidence presented during the proceedings under Rule 11.09.

**11.14    No limitation**

Nothing in Rules 11.12 and 11.13 prevents the Exchange from proceeding with disciplinary proceedings under Rule 11.09 for any breach of a Rule.

PART E APPEAL

**11.15 Right of appeal**

- (1) In amplification of Rule 2.05, any party to the disciplinary proceedings taken under Rule 11.09 who is dissatisfied with a decision resulting from the disciplinary proceedings, may appeal against such decision in the manner prescribed in Rule 11.16 unless the decision was recorded pursuant to an agreed settlement under Rule 11.04 (“the Appellant”).
- (2) The Exchange may suspend the enforcement of any action taken under Rule 11.02 that is the subject of the appeal until the disposal of the appeal.

**11.16 Notice of appeal**

The Appellant must, within the time stated in the notification of decision given under Rule 11.09, give to the Exchange a notice (“Notice of Appeal”) that:

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

**11.17 Deliberation of appeal**

- (1) An Appellant may produce evidence that was not presented at the initial disciplinary proceedings if:
  - (a) the evidence was not available at the time of the initial disciplinary proceedings; and
  - (b) the evidence would have been likely to have had a determining influence upon the decision appealed against.
- (2) The Appellant must produce the new evidence as stated in Rule 11.17(1) when submitting the Notice of Appeal.
- (3) The Exchange may exercise its powers under Chapter 10 and produce new evidence arising from the Notice of Appeal submitted by a Participant or Registered Person.
- (4) The Exchange may affirm, vary or set aside the decision appealed against.

**11.18 Notification of decision on appeal**

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

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**PART F            EFFECT OF DISCIPLINARY ACTION**

**11.19    General**

- (1) A Participant or Registered Person must give effect to a decision made under Rule 11.09 or Rule 11.12 or a decision affirmed or varied under Rule 11.15 within the time prescribed by the Exchange.
- (2) If a Participant or Registered Person fails to give effect to or comply with such decision made, affirmed or varied, the Participant or Registered Person is deemed to have committed a breach of these Rules and the Exchange may take further action as stated under Rule 11.02.

**11.20    Period of payment and effect of non-payment of fine**

- (1) Without prejudice to Rule 11.19(2), a fine imposed by the Exchange must be paid by the Participant or Registered Person within the time prescribed in the notice under Rule 11.11 or Rule 11.18.
- (2) Pursuant to Rules 11.20(1) and 11.13(4), a Participant or Registered Person who fails to make payment within the prescribed time frame will be summarily suspended from further trading, or as the case may be, from its functions and activities.
- (3) Where the fine remains unpaid 7 days after the suspension under Rule 11.20 (2), the Exchange may summarily terminate the participation of the Participant or summarily strike the Registered Person off the Register.
- (4) A fine or any portion of a fine remaining unpaid by a Participant or Registered Person is a debt owing by the Participant to the Exchange.

**11.21    Effect of suspension**

- (1) A suspension imposed by the Exchange upon the Participant or Registered Person:
  - (a) takes effect on the date prescribed in the notice under Rule 11.11 or Rule 11.18 (“the said notice”); and
  - (b) remains for such period as prescribed in the said notice but the period may be extended by the Exchange for such period as it considers appropriate.
- (2) A Participant or Registered Person who has been suspended for any reason must immediately cease to trade but nothing is to be construed as releasing or discharging such Participant or Registered Person from remaining liable in all respects to fulfil all its obligations pursuant to or under these Rules.

[End of Chapter 11]