

CHAPTER 3

DISCIPLINARY ACTION

GENERAL SECTION

3.1 INTERPRETATION

In this Chapter, “disciplinary proceedings” where the context permits includes appeal proceedings under Section C.

3.2 DISCIPLINARY POWERS

The Clearing House may exercise its disciplinary powers under this General Section of Chapter 3 against a Participant if the Participant is found to have committed any of the acts of misconduct stipulated in Rule 3.3 (“Defaulting Participant”). The Clearing House’s disciplinary powers include the taking of one or more of the following actions:

- (a) suspend or terminate its Clearing Participantship in accordance with the terms prescribed by the Clearing House;
- (b) suspend or terminate the Defaulting Participant as a SBL Participant/Agent or ISSBNT Participant/Representative in accordance with the terms prescribed by the Clearing House;
- (c) limit or disallow the access of the Defaulting Participant to any of the services or facilities of the Clearing House or suspend the Defaulting Participant’s privileges or activities on such terms and for such period as the Clearing House may in its sole discretion determine, including in relation to any function that has been outsourced;
- (d) impose a fine not exceeding RM1 million on the Defaulting Participant;
- (e) reprimand (privately or publicly) the Defaulting Participant;
- (f) impose any restriction or condition in relation to the breach committed or on the activities that a Defaulting Participant who is a Clearing Participant undertakes;
- (g) impose 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;
- (h) direct a Defaulting Participant who is a Clearing Participant to take appropriate action against any of its employees or agents if such employees or agents caused the Defaulting Participant to commit the breach;
- (i) mandate education, training or such other types of programme as may be determined by the Clearing House, to be undertaken or implemented by the Defaulting Participant who is a Clearing Participant, for its employees;
- (j) [Deleted];

- (k) impose any restriction, prohibition or requirement regarding the disposal, holding or dealing with any monies or assets of a client by a Defaulting Participant who is a Clearing Participant; or
- (l) any other action the Clearing House considers appropriate, subject to consultation with the Commission.

3.3 ACTS OF MISCONDUCT

Without prejudice to any other provisions in these Rules, the Clearing House may institute disciplinary action against a Participant in respect of an act of misconduct which includes:

- (a) Breaches of any of the Rules, Operational Procedures, orders, directives, conditions or other requirements imposed by the Clearing House on the Participant;
- (b) (With respect to a Trading Clearing Participant), any event that entitles the Clearing House to invoke its Default Rules against such a Clearing Participant;
- (c) Failure to comply with any decision of the Clearing House;
- (d) Any conduct, the manner of which is detrimental to the interest of the Clearing House or any other Participant;
- (e) Any conduct by the Participant the character of which is dishonourable, disgraceful or improper;
- (f) Any conduct the manner of which is disorderly or involves wilful obstruction of the clearing, settlement and other services or facilities of the Clearing House or otherwise;
- (g) The Participant being the subject of an adverse finding by another regulatory body in the financial and capital market or the financial services industry to which the Participant is subject;
- (h) The directors, shareholders, partners, employees, officers or agents of the Participant knowingly, being involved in, or engages in any conduct or any neglect or default which constitutes an act of misconduct in terms of the provisions of sub-rule (a) – (e);
- (i) The Participant providing information which is incorrect, incomplete, misleading or false in a material way which the Clearing House in reliance on the information provided by the Participant, admitted the Participant to its participants or extended to the Participant such other services or facilities or conferred on the Participant a benefit or privilege or other advantage;
- (j) Deleted;
- (k) Errors, delays or other conduct embarrassing, impeding or disrupting the operations, services or facilities of the Clearing House;
- (l) The Participant having violated, directly or indirectly, any provisions of the Act or of any regulations made thereunder;
- (m) The Participant having failed to cooperate with the Clearing House and/or any regulatory or relevant authority in matters concerning the clearing and settlement services or any other services or facilities of the Clearing House, whether or not relating to that Participant which materially affects the interest of the Clearing House or other Participants; or

- (n) The Clearing Participant having repeatedly failed to honour any ISS Instruction, ISS Confirmation or ISS Affirmation, or any instruction issued by the Clearing House in respect of an ISS Transaction.

3.4 PROCEDURES

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

3.5 AGREED SETTLEMENT

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

3.6 REQUEST FOR ORAL REPRESENTATIONS

- (1) A Participant may request for an oral representation to make submissions or to procure the attendance of witnesses or legal representation at such oral representation for proceedings commenced against the Participant.
- (2) A request under Rule 3.6(1) must be submitted with:
 - (a) a Response as provided under Rule A3.2; or
 - (b) a Notice of Appeal as provided under Rule C3.2.
- (3) The Clearing House may, in its absolute discretion, allow or disallow any request made pursuant to Rule 3.6(1), upon such terms and conditions as the Clearing House deems appropriate.

3.7 STANDARD OF PROOF

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

3.8 OTHER RIGHTS

The exercise of powers under Rule 3.2 does not in any way prejudice the other rights of the Clearing House against a Participant, or any other person to whom these Rules are directed.

3.9 ACTS OR OMISSIONS OF EMPLOYEES, AGENTS OR DIRECTORS

Where the acts or omissions of an 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 omission are deemed to be committed by that Participant and disciplinary action may be taken against it.

CHAPTER 3

SECTION A

DISCIPLINARY PROCEEDINGS

A3.1 REQUISITE NOTICE

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

A3.2 RESPONSE TO REQUISITE NOTICE

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

A3.3 NOTIFICATION OF DECISION

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

CHAPTER 3

SECTION B

EXPEDITED PROCEEDINGS

B3.1 SCOPE

The Clearing House may initiate expedited proceedings against a Defaulting Participant against whom disciplinary action is proposed to be taken instead of the proceedings under Section A of Chapter 3 in circumstances the Clearing House 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 the above.

B3.2 PROCEDURE

- (1) The Clearing House will notify the Defaulting Participant in writing that the matter will be proceeded with by way of expedited proceedings. The notice will specify the breach and penalty imposed for the breach ("Determination").
- (2) The Defaulting Participant must, within the time specified in the Determination, inform the Clearing House in writing whether or not the Defaulting Participant agrees with the Determination. A Defaulting Participant is deemed to have agreed with the Determination if the Defaulting Participant does not respond within the specified time.
- (3) If the Defaulting Participant agrees or is deemed to have agreed with the Determination, disciplinary action will be recorded as having been taken against the Defaulting Participant on the date of the Defaulting Participant's agreement or upon expiry of the specified time.
- (4) If the Defaulting Participant agrees or is deemed to have agreed with the Determination, any fine imposed as a penalty for the breach must be paid:
 - (a) upon the Defaulting Participant informing the Clearing House in writing of his agreement with the Determination; or
 - (b) within the time specified in the Determination;as the case may be.
- (5) If the Defaulting Participant does not agree with the Determination, the matter will proceed under Section A of Chapter 3. The Defaulting Participant may, within the time specified in the Determination, submit a written response to the Determination as if the Determination is a Requisite Notice under Rule A3.1. In deliberating the matter under Section A of Chapter 3, the Clearing House is not bound by the Determination and may impose a higher penalty based on the facts or evidence presented during the proceedings under Section A of Chapter 3.

B3.3 NO LIMITATION

Nothing in Section B of Chapter 3 prevents the Clearing House from proceeding with disciplinary proceedings under Section A of Chapter 3 for any breach of a Rule.

CHAPTER 3

SECTION C

APPEAL

C3.1 RIGHT OF APPEAL

- (1) In amplification of Rule 1.28, any party to the disciplinary proceedings taken under Section A of Chapter 3 and Rule B3.2(5) who is dissatisfied with a decision resulting from the disciplinary proceedings may appeal against such decision in the manner specified in Rule C3.2 unless the decision was recorded pursuant to an agreed settlement under Rule 3.5 (“the Appellant”).
- (2) The Clearing House may suspend the enforcement of any action taken under Rule 3.2 that is the subject of the appeal until the disposal of the appeal.

C3.2 NOTICE OF APPEAL

The Appellant must, within the time stated in the notification of decision given under Rule A3.3, give to the Clearing House 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.

C3.3 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 C3.3(1) when submitting the Notice of Appeal.
- (3) The Clearing House may exercise its powers under Rule 2A.6 and produce new evidence arising from the Notice of Appeal submitted by a Defaulting Participant.
- (4) The Clearing House may affirm, vary or set aside the decision appealed against.

C3.4 NOTIFICATION OF DECISION ON APPEAL

After the conclusion of an appeal, the Clearing House will notify the Defaulting Participant in writing of the decision of the appeal and such decision is final.

CHAPTER 3

SECTION D

EFFECT OF DISCIPLINARY ACTION

D3.1 GENERAL

- (1) A Defaulting Participant must give effect to a decision made under Section A or Section B of Chapter 3 or a decision affirmed or varied under Section C of Chapter 3 within the time stipulated by the Clearing House.
- (2) If a Defaulting Participant fails to give effect to or comply with such decision made, affirmed or varied, the Defaulting Participant is deemed to have committed a breach of these Rules and the Clearing House may take further action as stated under Rule 3.2.

D3.2 PERIOD OF PAYMENT AND EFFECT OF NON-PAYMENT OF FINE

- (1) Without prejudice to Rule D3.1(2), a fine imposed by the Clearing House must be paid by the Defaulting Participant within the time stipulated in the notice under Rule A3.3 or Rule C3.4.
- (2) Pursuant to Rule D3.2(1) and Rule B3.2(4), a Defaulting Participant who fails to make payment within the stipulated time frame will be summarily suspended from its functions and activities.
- (3) Where the fine remains unpaid 7 days after the suspension under Rule D3.2(2), the Clearing House may at any time thereafter summarily terminate the Defaulting Participant's Clearing Participantship or the Defaulting Participant/Agent as a SBL Participant/Agent, where relevant, by notice in writing.
- (4) A fine or any portion of a fine remaining unpaid by a Defaulting Participant is a debt owing by the Defaulting Participant to the Clearing House.

D3.3 EFFECT OF SUSPENSION OR TERMINATION

- (1) A suspension imposed by the Clearing House upon the Defaulting Participant:
 - (a) takes effect on the date notified in the notice under Rule A3.3 or Rule C3.4 ("the said notice"); and
 - (b) remains for such period as specified in the said notice but the period may be extended by the Clearing House for such period it considers appropriate.
- (2) Nothing in this Rule D3.3 is to be construed as releasing or discharging such Defaulting Participant from remaining liable in all respects to fulfil all its obligations pursuant to or under these Rules.
- (3) Any Defaulting Participant who has been suspended or terminated from Clearing Participantship shall be subject to Rule 4.2, wherever appropriate.

CHAPTER 3

SECTION E

TRANSITIONAL PROVISIONS

E3.1 DISCIPLINARY ACTION INITIATED PRIOR TO THE EFFECTIVE DATE

- (1) Unless these Rules or the Clearing House provides otherwise, the Clearing House will apply the penalties, rules and procedures on disciplinary actions applicable prior to the effective date of these new provision on disciplinary actions ("Effective Date") to a disciplinary action instituted by the Clearing House against a Participant prior to the Effective Date.
- (2) The previous penalties, disciplinary rules and procedures will also apply to an appeal against a decision on a disciplinary action instituted prior to the Effective Date.

E3.2 DISCIPLINARY ACTION INITIATED ON OR AFTER THE EFFECTIVE DATE

Unless these Rules or the Clearing House provides otherwise, the Clearing House may on or after the Effective Date, institute disciplinary action against a Participant for acts or omissions committed prior to the Effective Date if no disciplinary action has been instituted. In doing so, the Clearing House may apply the new penalties, rules and procedures on disciplinary actions applicable from the Effective Date.