

## Commodity Futures Trading Commission

## § 10.110

### § 10.109 Delegation of authority to Chief of the Opinions Section.

The Commodity Futures Trading Commission hereby delegates, until such time as it orders otherwise, the following function to the General Counsel, to be performed by him or by such person or persons under his direction as he may designate from time to time:

(a) With respect to proceedings conducted pursuant to the Commodity Exchange Act, as amended, 7 U.S.C. 1 *et seq.*, and subject to the Commission's Rules of Practice as set forth in part 10 of this chapter, to:

(1) Consider and decide miscellaneous motions for procedural orders that may be directed to the Commission pursuant to part 10 of these rules after the initial decision or other order disposing of the entire proceeding has been filed; such motions may be acted upon at anytime, without awaiting a response;

(2) Remand, with or without specific instructions, initial decisions or other orders disposing of the entire proceeding to the appropriate officer in the following situations:

(i) Where a default order has been made pursuant to § 10.93 of these rules and a motion to vacate the default or equivalent request has been directed to the Commission under § 10.94 without the benefit of a prior ruling by the Administrative Law Judge;

(ii) Where, in his judgment, clarification or supplementation of the initial decision or other order disposing of the entire proceeding prior to Commission review is appropriate; however, the General Counsel or his designee may not direct that the record be reopened;

(iii) Where, in his judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed;

(3) Deny applications for interlocutory Commission review of a ruling of the Administrative Law Judge in cases in which the Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by § 10.101(a) of the rules; and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Law Judge; and the ruling does not concern the suspension of, or failure to suspend, an

attorney from participation in a particular proceeding, or the denial of intervention or limited participation;

(4) Deny any application for interlocutory review in a proceeding if it is not filed in accordance with § 10.101(b) of these rules;

(5) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge, where such appeal is not filed and perfected in accordance with § 10.102 of these rules;

(6) Strike any filing that does not meet the requirements of, or is not perfected in accordance with, part 10 of these rules;

(7) Stay, for a limited period of time not to exceed ten working days, any order of the Commission entered in a proceeding subject to these rules;

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the General Counsel or his designee believes it appropriate, he may submit the matter to the Commission for its consideration;

(c) Within seven (7) days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling.

[50 FR 33515, Aug. 20, 1985, as amended at 60 FR 54802, Oct. 26, 1995; 64 FR 43071, Aug. 9, 1999]

### Subpart I—Restitution Orders

SOURCE: 63 FR 55795, Oct. 19, 1998, unless otherwise noted.

### § 10.110 Basis for issuance of restitution orders.

(a) *Appropriateness of restitution as a remedy.* In any proceeding in which an order requiring restitution may be entered, the Administrative Law Judge shall, as part of his or her initial decision, determine whether restitution is appropriate. In deciding whether restitution is appropriate, the Administrative Law Judge, in his or her discretion, may consider the degree of complexity likely to be involved in establishing claims, the likelihood that

## § 10.111

claimants can obtain compensation through their own efforts, the ability of the respondent to pay claimants damages that his or her violations have caused, the availability of resources to administer restitution and any other matters that justice may require.

(b) *Restitution order.* If the Administrative Law Judge determines that restitution is an appropriate remedy in a proceeding, he or she shall issue an order specifying the following:

(1) All violations that form the basis for restitution;

(2) The particular persons, or class or classes of persons, who suffered damages proximately caused by each such violation;

(3) The method of calculating the amount of damages to be paid as restitution; and

(4) If then determinable, the amount of restitution the respondent shall be required to pay.

### § 10.111 Recommendation of procedure for implementing restitution.

Except as provided by § 10.114, after such time as any order requiring restitution becomes effective (*i.e.*, becomes final and is not stayed), the Division of Enforcement shall petition the Commission for an order directing the Division to recommend to the Commission or, in the Commission's discretion, the Administrative Law Judge a procedure for implementing restitution. Each party that has been ordered to pay restitution shall be afforded an opportunity to review the Division of Enforcement's recommendations and be heard.

### § 10.112 Administration of restitution.

Based on the recommendations submitted pursuant to § 10.111, the Commission or the Administrative Law Judge, as applicable, shall establish in writing a procedure for identifying and notifying individual persons who may be entitled to restitution, receiving and evaluating claims, obtaining funds to be paid as restitution from the party and distributing such funds to qualified claimants. As necessary or appropriate, the Commission or the Administrative Law Judge may appoint any person, including an employee of the Commission, to administer, or assist in admin-

## 17 CFR Ch. I (4-1-01 Edition)

istering, such restitution procedure. Unless otherwise ordered by the Commission, all costs incurred in administering an order of restitution shall be paid from the restitution funds obtained from the party who was so sanctioned; provided, however, that if the administrator is a Commission employee, no fee shall be charged for his or her services or for services performed by any other Commission employee working under his or her direction.

### § 10.113 Right to challenge distribution of funds to customers.

Any order of an Administrative Law Judge directing or authorizing the distribution of funds paid as restitution to individual customers shall be considered a final order for appeal purposes to be subject to Commission review pursuant to § 10.102.

### § 10.114 Acceleration of establishment of restitution procedure.

The procedures provided for by §§ 10.111 through 10.113 may be initiated prior to the issuance of the initial decision of the Administrative Law Judge and may be combined with the hearing in the proceeding, either upon motion by the Division of Enforcement or if the Administrative Law Judge, acting on his own initiative or upon motion by a respondent, concludes that the presentation, consideration and resolution of the issues relating to the restitution procedure will not materially delay the conclusion of the hearing or the issuance of the initial decision.

## APPENDIX A TO PART 10—COMMISSION POLICY RELATING TO THE ACCEPTANCE OF SETTLEMENTS IN ADMINISTRATIVE AND CIVIL PROCEEDINGS

It is the policy of the Commission not to accept any offer of settlement submitted by any respondent or defendant in an administrative or civil proceeding, if the settling respondent or defendant wishes to continue to deny the allegations of the complaint or the findings of fact or conclusions of law to be made in the settlement order entered by the Commission or a court. In accepting a settlement and entering an order finding violations of the Act and/or regulations promulgated under the Act, the Commission makes uncontested findings of fact and conclusions