

**§ 10.111**

**17 CFR Ch. I (4–1–03 Edition)**

**§ 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 administering, 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 of law. Similarly, in settling a civil proceeding with a defendant the Commission invites the federal court to make conclusions of law and, in some instances, findings of fact. The Commission does not believe it would be appropriate for it to be making or inviting a court to make such uncontested findings of violations if the party against whom the findings and conclusions are to be entered is continuing to deny the alleged misconduct.

The refusal of a settling respondent or defendant to admit the allegations in a Commission-instituted complaint or the findings of fact or conclusions of law in the settlement order entered by the Commission or a court shall be treated as a denial, unless the party states that he or she neither admits nor denies the allegations or the findings and conclusions. In that event, the proposed offer of settlement, consent or consent order must include a provision stating that, by neither admitting nor denying the allegations, findings or conclusions, the settling respondent or defendant agrees that neither he or she nor any of his or her agents or employees under his authority or control shall take any

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action or make any public statement denying, directly or indirectly, any allegation in the complaint or findings or conclusions in the order, or creating, or tending to create, the impression that the complaint or the order is without a factual basis; provided, however, that nothing in this provision shall affect the settling respondent's or defendant's—

- i. Testimonial obligation, or
- ii. Right to take legal positions in other proceedings to which the Commission is not a party.

[64 FR 30903, June 9, 1999]

### PART 11—RULES RELATING TO INVESTIGATIONS

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#### APPENDIX A TO PART 11—INFORMAL PROCEDURE RELATING TO THE RECOMMENDATION OF ENFORCEMENT PROCEEDINGS

AUTHORITY: 7 U.S.C. 4a(j), 9 and 15, 12, 12a(5), 12(f).

SOURCE: 41 FR 29799, July 19, 1976, unless otherwise noted.

#### § 11.1 Scope and applicability of rules.

The rules of this part apply to investigatory proceedings conducted by the Commission or its staff pursuant to sections 6(c) and 8 and 12(f) of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 15 and 12 and 16(f) (Supp. IV, 1974), to determine whether there have been violations of that Act, or the rules, regulations or orders adopted thereunder, or, in accordance with the provisions of section 12(f) of the Act, whether there have been violations of the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an application for designation or registration under the Act should be denied. Except as otherwise specified herein, the rules will apply to the conduct of investigation whether or not the Commission has authorized the use of subpoenas in

the particular matter to compel the production of evidence.

[63 FR 5233, Feb. 2, 1998]

#### § 11.2 Authority to conduct investigations.

(a) The Director of the Division of Enforcement and members of the Commission staff acting pursuant to his authority and under his direction may conduct such investigations as he deems appropriate to determine whether any persons have violated, are violating, or are about to violate the provisions of the Commodity Exchange Act, as amended, or the rules, regulations or orders adopted by the Commission pursuant to that Act, or, in accordance with the provisions of section 12(f) of the Act, whether any persons have violated, are violating or are about to violate the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an applicant for registration or designation meets the requisite statutory criteria. For this purpose, the Director may obtain evidence through voluntary statements and submissions, through exercise of inspection powers over boards of trade, reporting traders, and persons required by law to register with the Commission, or when authorized by order of the Commission, through the issuance of subpoenas. The Director shall report to the Commission the results of his investigations and recommend to the Commission such enforcement action as he deems appropriate. In particular matters the Director of the Division of Clearing and Intermediary Oversight and the Chief Economist and Director of the Division of Market Oversight, and members of their staffs acting within the scope of their respective responsibilities, are also authorized to investigate, report and recommend to the Commission in accordance with these rules.

(b) The Commission hereby delegates, until the Commission orders otherwise, to its Regional Directors and to the Director, the Deputy Directors, the Program Coordinator, the Chief Counsel, the Associate Directors, and the Regional Counsel of the Division of Enforcement the authority to grant to any employee of the Division