

## Commodity Futures Trading Commission

## § 12.104

### § 12.36 Subpoenas to compel discovery.

An application for a subpoena requiring a party or non-party to comply with a discovery order issued pursuant to §§ 12.31 and 12.32, may be made, in writing, by any party without notice to other parties, and may be filed simultaneously with the motion for the discovery order. The standards for issuance or denial of such an application, the service requirement, and the method for enforcing such subpoenas shall be determined by the provisions of § 12.313 of these rules.

### Subpart C—Rules Applicable to Voluntary Decisional Proceedings

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

(a) *In general.* The rules set forth in this subpart are applicable only to proceedings forwarded pursuant to § 12.26(a) of the Reparation Rules. The rules of subpart B permitting discovery are applicable in a voluntary decisional proceeding. Unless specifically made applicable, the rules prescribed in subparts D, E, and F shall not apply in a voluntary decisional proceeding.

(b) *Waiver by electing the voluntary decisional procedure.* By electing the voluntary decisional procedure, parties waive the opportunity for an oral hearing and whatever rights they may have otherwise had: to receive a written statement of the findings of fact upon which the final decision is based; to prejudgment interest in connection with a reparation award; to appeal to the Commission the final decision; and to appeal the final decision to a U.S. Court of Appeals pursuant to section 14(e) of the Commodity Exchange Act, 7 U.S.C. 18(e).

#### § 12.101 Functions and responsibilities of the Judgment Officer.

The Judgment Officer shall be responsible for the fair and orderly conduct of the proceeding and shall have the authority:

(a) To rule upon discovery-related motions, and to issue orders pertaining to discovery;

(b) To take such action pursuant to § 12.35 as is appropriate if a party fails to comply with a discovery order;

(c) To issue subpoenas pursuant to § 12.36 of these rules;

(d) To issue orders of default for good cause shown against any party who fails to participate in the proceeding, or to comply with any provisions of these rules;

(e) To receive submissions of proof;

(f) Make the final decision in accordance with § 12.106 of these rules; and

(g) Issue such orders as are necessary and appropriate to effectuate the orderly conduct of the proceeding.

[49 FR 6621, Feb. 22, 1984; 49 FR 15070, Apr. 17, 1984]

#### § 12.102 Disqualification of Judgment Officer.

(a) *At his own request.* A Judgment Officer may withdraw from a voluntary decisional proceeding when he considers himself to be disqualified on the grounds of personal bias, conflict of interest, or similar bases. In such event he shall immediately notify the Commission and each of the parties of his withdrawal and of his basis for such action.

(b) *Upon the request of a party.* Any party may request a Judgment Officer to disqualify himself on the grounds of personal bias, conflict of interest, or similar bases. Interlocutory review of an adverse ruling by the Judgment Officer may be sought without certification of the matter by the Judgment Officer only in accordance with the procedures set forth in § 12.309 of the Reparation Rules.

#### § 12.103 Filing of documents; subscription; service.

Except as otherwise specifically provided in these rules, all documents filed in a voluntary decisional proceeding, including (but not limited to) amended or supplemental pleadings, motions, discovery requests and responses thereto, and submissions of proof, shall meet the requirements of §§ 12.11 and 12.12 of the Reparation Rules as to form, and shall be filed and served in accordance with § 12.10 of the Reparation Rules.

#### § 12.104 Amendments to pleadings; motions.

(a) *Amendments and supplemental pleadings.* At any time prior to the

issuance of the final decision, the parties may, by unanimous express written consent, amend or supplement the pleadings. Supplemental pleadings may set forth transactions or occurrences or events which have happened since the date of the pleadings to be amended or supplemented, and which are relevant to any of the issues involved.

(b) *Motions.* Except as specifically permitted by rule in this subpart, motions, other than discovery-related motions and motions relating to procedural orders, shall be prohibited. Motions for procedural orders, including motions for extension of time, may be acted upon at any time.

**§ 12.105 Submission of proof only in documentary or tangible form.**

Proof in support of the complaint and in support of the respondent's answer (including counterclaims, if any), and any reply thereto, may be found in those verified documents, in verified statements of non-party witnesses, in other verified statements of fact, and in other documents and tangible evidence. No oral testimony by, or examination of, the parties or their witnesses shall be permitted.

**§ 12.106 Final decision and order.**

(a) *When a final decision is required.* After all submissions of proof have been received, the Judgment Officer shall make the final decision. Upon its issuance, the final decision shall forthwith be filed with the Proceedings Clerk, and immediately served on the parties. The Proceedings Clerk shall also serve a notice, to accompany the final decision, of the effect of a failure by a party ordered to pay a reparation award to file the documents required by § 12.407(c) of these rules.

(b) *Content of final decision.* The final decision shall contain:

(1) A briefly stated conclusion, not accompanied by findings of fact, as to whether the respondent violated any provision of the Act, Commission's regulations or orders, resulting in damages to the complainant; and

(2) If one or more counterclaims have been permitted in the proceeding, a brief conclusion, not accompanied by findings of fact, as to whether the com-

plainant is liable to the respondent for such counterclaims; and

(3) A determination of the amount of damages, if any, sustained by complainant or respondent in connection with reparation claims or counterclaims, and an order against a party found liable for damages directing that party to pay an award. An award in favor of the complainant shall not exceed the amount of damages in the complaint (including any amendment thereto), and an award in favor of a respondent shall not exceed the amount of damages claimed in a counterclaim (including any amendment thereto).

A conclusion made pursuant to paragraph (b)(1) of this section shall not be deemed a finding of the Commission for the purposes of Section 8a of the Commodity Exchange Act.

(c) *No assessment of prejudgment interest or costs.* A party found liable for damages in a voluntary decisional proceeding shall not be assessed prejudgment interest, attorney's fees, or costs (other than the filing fee and costs assessed as a sanction for abuse of discovery).

(d) *Effect of final decision and order: No appeal.* A party may not appeal to the Commission a final decision issued pursuant to subpart C of these rules. In accordance with the election and waivers described in § 12.100(b), a final decision may not be appealed to a U.S. Court of Appeals pursuant to section 14(e) of the Commodity Exchange Act, but a final decision shall be recognized as a final order of the Commission for all other purposes including the judicial enforcement of an award made in connection with the final decision pursuant to section 14(d) of the Commodity Exchange Act.

(e) *Effective date of final decision.* A final decision and order shall become effective thirty (30) days after service, unless the Commission pursuant to § 12.403 takes review of the decision on its own motion on or before the thirtieth day. Any reparation award ordered in a final decision pursuant to this rule shall be satisfied in full within forty-five (45) days after service thereof, unless the Commission pursuant to § 12.403(b) stays the duty of satisfaction. Any party who fails timely to satisfy such an award is subject to the