

## Commodity Futures Trading Commission

## § 8.12

staff to issue a warning letter to a person under investigation or to recommend that the disciplinary committee issue such a letter. A warning letter issued in accordance with this section is not a penalty or an indication that a finding of a violation has been made. A copy of such warning letter issued by the enforcement staff shall be included in the investigation report required by paragraph (a) or (b) of this section.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

### § 8.08 Disciplinary committee.

Each exchange shall establish one or more disciplinary committees which shall be authorized by the exchange to determine whether violations have been committed, to accept offers of settlement and to set and impose appropriate penalties. Each such disciplinary committee shall consist of one or more members of the exchange or persons on the staff of the exchange; however, persons on the enforcement staff may not serve on a disciplinary committee.

### § 8.09 Review of investigation report.

The disciplinary committee shall promptly review each investigation report. In the event the disciplinary committee determines that additional investigation or evidence is needed, it shall promptly direct the enforcement staff to conduct its investigation further. Within a reasonable period of time not to exceed 30 days after the receipt of a completed investigation report, the disciplinary committee shall take one of the following actions:

(a) If the disciplinary committee determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and contain a brief statement setting forth the reasons therefor.

(b) If the disciplinary committee determines that a reasonable basis exists for finding a violation which should be adjudicated, it shall direct that the person alleged to have committed the violation be served with a notice of

charges and shall proceed in accordance with the rules of this subpart.

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[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

### § 8.10 Predetermined penalties.

An exchange may adopt rules which set specific maximum penalties for particular violations. If the rules of an exchange establish predetermined penalties, the disciplinary committee shall have discretion in each case whether to employ the predetermined penalty. If the predetermined penalty is employed, it shall be stated in the notice of charges. In such case, after a hearing on a denied charge where a respondent is found to have committed the violation charged, the disciplinary committee shall impose the predetermined penalty or an appropriate lesser penalty.

### § 8.11 Notice of charges.

The notice of charges shall:

(a) State the acts, practices, or conduct in which the person is alleged to have engaged;

(b) State the rule alleged to have been violated (or about to be violated);

(c) State the predetermined penalty, if any;

(d) Prescribe the period within which a hearing on the charges may be requested;

(e) Advise the person charged that:

(1) He is entitled, upon request, to a hearing on the charges;

(2) If the rules of the exchange so provide, failure to request a hearing within the period prescribed in the notice, except for good cause, shall be deemed a waiver of the right to a hearing; and

(3) If the rules of the exchange so provide, failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

(Approved by the Office of Management and Budget under control number 3038-0022)

[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

### § 8.12 Right to representation.

Upon being served with a notice of charges the respondent shall have the right to be represented by legal counsel