

## Commodity Futures Trading Commission

## § 12.2

SOURCE: 49 FR 6621, Feb. 22, 1984, unless otherwise noted.

### Subpart A—General Information and Preliminary Consideration of Pleadings

#### § 12.1 Scope and applicability of rules of practice relating to reparations.

(a) *Part 12 Reparation Rules.* These rules of practice are applicable to reparation applications filed pursuant to section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. section 18. The rules in this part shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues presented with full protection for the rights of all parties.

(b) *Other rules of practice.* Unless specifically made applicable, other Rules of Practice promulgated under the Commodity Exchange Act, as amended, shall not apply to reparation matters.

(c) *Applicability of these part 12 Reparation Rules.* These rules shall apply in their entirety to all reparation complaints and matters relating thereto.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9635, Mar. 1, 1994]

#### § 12.2 Definitions.

For purposes of this part:

*Act* means the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*;

*Administrative Law Judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

*Commission* means the Commodity Futures Trading Commission;

*Commission decisional employee* means an employee or employees of the Commission who are or may reasonably be expected to be involved in the decision-making process in any proceeding, including, but not limited to: A Judgment Officer; members of the personal staffs of the Commissioners, but not the Commissioners themselves; members of the staffs of the Administrative Law Judges, but not an Administrative Law Judge; members of the staffs of the Judgment Officers; members of the Office of the General Counsel; members of the staff of the Office of Proceedings; and other Commission em-

ployees who may be assigned to hear or to participate in the decision of a particular matter.

*Complainant* means a person who, individually or jointly with others, has applied to the Commission for a reparation award pursuant to section 14(a) of the Act, but shall not include a cross claimant or any other type of third party claimant. The term “complainant” under these rules applies equally to two or more persons who have applied jointly for a reparation award;

*Complaint* means any document which constitutes an application for a reparation award pursuant to section 14(a) of the Act, regardless of whether it is denominated as such;

*Counterclaim* means an application for a reparation award by a respondent against a complainant which satisfies the requirements of §12.19. A counterclaim does not mean a cross claim or other type of third party claim;

*Director of the Office of Proceedings* means an employee of the Commission who serves as the administrative head of that Office, with responsibility and authority to assure that these part 12 Reparation Rules are administered in a manner which will effectuate the purposes of section 14(b) of the Act. The Director is authorized to convene meetings of all personnel in the Office of Proceedings, including Administrative Law Judges and their personally assigned law clerks. The Director shall have the authority to delegate his duties to administer §§12.15, 12.24, 12.26 and 12.27, and, shall have the authority to assign and, if necessary, reassign the duties of, and set reasonable standards for performance for, all personnel in the Office, including the Judgment Officers, but not including Administrative Law Judges and their personally assigned law clerks;

*Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include:

(1) A discussion, after consent has been obtained from all of the named parties, between a party and a Judgment Officer or Administrative Law Judge, or the staffs of the foregoing, pertaining solely to the possibility of

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settling the case without the need for a decision;

(2) Requests for status reports, including questions relating to service of the complaint, and the registration status of any persons, on any matter or proceeding covered by these rules; or

(3) Requests made to the Office of Proceedings or the Office of the General Counsel for interpretation of these rules.

*Formal decisional procedure* means, where the amount of total damages claimed exceeds \$30,000, exclusive of interest and costs, a procedure elected by the complainant or a respondent where the parties may be granted an oral hearing. A formal decisional proceeding is governed by subpart E;

*Hearing* means that part of a proceeding which involves the submission of proof, either by oral presentation or written submission;

*Interested person* means any party, and includes any person or agency permitted limited participation or to state views in a reparation proceeding, or other person who might be adversely affected or aggrieved by the outcome of a proceeding (including the officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives of such persons), and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding;

*Judgment Officer* means an employee of the Commission who is authorized to conduct the proceeding and render a decision in a summary decisional proceeding or a voluntary decisional proceeding. In appropriate circumstances, the functions of a Judgment Officer may be performed by an Administrative Law Judge;

*Office of the General Counsel* refers to the members of the Commission's staff who provide assistance to the Commission in its direct review of any proceeding conducted pursuant to these rules;

*Office of Proceedings* means that Office within the Commission comprised of the Administrative Law Judges, Judgment Officers, the Director of that Office, the Proceedings Clerk, and members of the staffs of the foregoing, which administers these part 12 Reparation Rules, other than the rules au-

thorizing direct review by the Commission;

*Order* means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission, an Administrative Law Judge, a Judgment Officer, or the Proceedings Clerk;

*Party* means a complainant, respondent or any other person or agency named or admitted as a party in a reparation matter;

*Person* means any individual, association, partnership, corporation or trust;

*Pleading* means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply to the foregoing;

*Proceeding* means a case in which the pleadings have been forwarded and in which a procedure has been commenced pursuant to § 12.26;

*Proceedings Clerk* means that member of the Commission's staff in the Office of Proceedings who shall maintain the Commission's reparation docket, assign reparation cases to an appropriate decisionmaking official, and act as custodian of the records of proceedings;

*Punitive damages* means damages awarded (no more than two times the amount of actual damages) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market. An order does not have to be actually executed to render a violation subject to punitive damages. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate;

*Registrant* means any person who—

(1) Was registered under the Act at the time of the alleged violation;

(2) Is subject to reparation proceedings by virtue of section 4m of the Commodity Exchange Act, regardless of whether such person was ever registered under the Act; or

(3) Is otherwise subject to reparation proceedings under the Act;

*Reparation award* means the amount of monetary damages a party may be ordered to pay;

*Respondent* means any person or persons against whom a complainant

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seeks a reparation award pursuant to section 14(a) of the Act;

*Summary decisional procedure* means, where the amount of total damages claimed does not exceed \$30,000, exclusive of interest and costs, a procedure elected by the complainant or the respondent wherein an oral hearing need not be held and proof in support of each party's case may be supplied in the form and manner prescribed by §12.208. A summary decisional proceeding is governed by subpart D;

*Voluntary decisional procedure* means, regardless of the amount of damages claimed, a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims, allowable under these rules, for an expeditious resolution by a Judgment Officer. By electing the voluntary decisional procedure, parties agree that a decision issued by a Judgment Officer shall be without accompanying findings of fact and shall be final without right of Commission review or judicial review. A voluntary decisional proceeding is governed by subpart C of these rules.

[59 FR 9635, Mar. 1, 1994]

### § 12.3 Business address; hours.

The principal office of the Commission is located at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until at least 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC.

[49 FR 6621, Feb. 22, 1984, as amended at 60 FR 49335, Sept. 25, 1995]

### § 12.4 Suspension, amendment, revocation and waiver of rules.

(a) *Suspension or change of rules.* These rules may, from time to time, be suspended, amended or revoked in whole or in part. Notice of such action will be published in the FEDERAL REGISTER.

(b) *Commission waiver of procedures.* In the interest of expediting decision or to prevent undue hardship on any party or for other good cause the Commission may order the adoption of expedited

procedures, may waive any rule in this part in a particular case, and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced thereby, and that the ends of justice will be served. Reasonable notice shall be given to all parties of any action taken pursuant to this provision.

### § 12.5 Computation of time.

(a) *In general.* In computing any period of time prescribed by these rules or allowed by the Commission, the Director of the Office of Proceedings, a Judgment Officer, or an Administrative Law Judge, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

Intermediate Saturday, Sundays, and legal holidays shall be excluded from the computation only when the period of time prescribed or allowed is less than seven (7) days.

(b) *Date of service of orders.* In computing any period of time involving the date of service of an order, the date of service shall be the date the order is served by the Proceedings Clerk, which, unless otherwise indicated, shall be the date stamped on the order by the Proceedings Clerk.

[49 FR 6621, Feb. 22, 1984, as amended at 57 FR 20638, May 14, 1992]

### § 12.6 Extensions of time; adjournments; postponements.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission, or a Judgment Officer, Administrative Law Judge, or the Director of the Office of Proceedings, before whom a matter is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by the rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or one of the