

§ 8.17

17 CFR Ch. I (4-1-07 Edition)

§ 8.17 Hearing.

(a) The following minimum requirements shall apply to any hearing required by this subpart:

(1) The hearing shall be fair and shall be conducted before members of the disciplinary committee. The hearing may be conducted before all of the members of the disciplinary committee or a panel thereof, but no member of the disciplinary committee may serve on the committee or panel if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter under consideration.

(2) The respondent shall be entitled in advance of the hearing to examine all books, documents, or other tangible evidence in the possession or under the control of the exchange which are to be relied upon by the enforcement staff in presenting the charges contained in the notice of charges or which are relevant to those charges.

(3) The hearing shall be promptly convened after reasonable notice to the respondent.

(4) The formal rules of evidence need not apply; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing.

(5) The enforcement staff shall be a party to the hearing and shall present its case on those charges and penalties which are the subject of the hearing.

(6) The respondent shall be entitled to appear personally at the hearing.

(7) The respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.

(8) The respondent shall be entitled to call witnesses and to present such evidence as may be relevant to the charges.

(9) The exchange shall require persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.

(10) If the respondent has requested a hearing, a substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding. The record must be one

that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed under § 8.19, or is reviewed by the Commission pursuant to section 8c of the Act or part 9 of this chapter. In all other instances a summary record of a hearing is permitted.

(i) The rules of an exchange may provide that the cost of transcribing the record of the hearing shall be borne by a respondent who requests the transcript, appeals the decision pursuant to § 8.19, or whose application for Commission review of the disciplinary action has been granted under part 9 of this chapter. In all other instances, the cost of transcribing the record shall be borne by the exchange.

(b) The rules of an exchange may provide that a penalty may be summarily imposed upon any person within its jurisdiction whose actions impede the progress of a hearing.

(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]

§ 8.18 Decision.

Promptly following a hearing conducted in accordance with § 8.17, the disciplinary committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(a) The notice of charges or a summary of the charges;

(b) The answer, if any, or a summary of the answer;

(c) A brief summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

(d) A statement of findings and conclusions with respect to each charge, including the specific rules which the respondent is found to have violated; and

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(e) A declaration of any penalty imposed and the effective date of such penalty.

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

§ 8.19 Appeal.

The rules of an exchange may permit a respondent to appeal promptly an adverse decision of a disciplinary committee in all or in certain classes of cases. Such rules may require a respondent's notice of appeal to be in writing and to specify the findings, conclusions, and/or penalty to which objection is taken. If the rules of an exchange permit appeal, they shall provide for the following:

(a) The exchange shall establish a board of appeals which shall be authorized to hear appeals of respondents. In addition, the rules of an exchange may provide that the board of appeals may, on its own initiative, order review of a decision by the disciplinary committee within a reasonable period of time after the decision has been rendered.

(b) No member of the board of appeals shall serve on an appeal or review panel if such member participated in any prior stage of the disciplinary proceeding or if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter. The rules of an exchange may provide that the appeal or review proceeding may be conducted before all of the members of the board of appeals or a panel thereof. Except for good cause shown, the appeal or review shall be conducted solely on the record before the disciplinary committee, the written exceptions filed by the parties, and the oral or written arguments of the parties.

(c) Promptly following the appeal or review proceeding, the board of appeals shall issue a written decision and shall provide a copy to the respondent. The decision shall include a statement of findings and conclusions with respect to each charge or penalty reviewed, including the specific rules which the respondent was found to have violated by the disciplinary committee, and a dec-

laration of any penalty imposed and the effective date of such penalty.

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

§ 8.20 Final decision.

Each exchange shall establish rules setting forth when a decision rendered pursuant to this subpart B shall become the final decision of such exchange.

Subpart C—Summary Actions

§ 8.25 Member responsibility actions.

An exchange may suspend at any time, or take other summary action against, a person subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace.

§ 8.26 Procedure for member responsibility actions.

An action pursuant to § 8.25 shall be taken in accordance with an exchange procedure which provides for the following:

(a) The respondent shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the respondent shall be served with a notice at the earliest possible opportunity. The notice shall:

- (1) State the action,
- (2) Briefly state the reasons for the action, and
- (3) State the effective time and date and the duration of the action.

(b) The respondent shall have the right to be represented by legal counsel or any other representative of his choosing in all proceedings subsequent to the summary action taken pursuant to § 8.25.

(c) The respondent shall promptly be given opportunity for a subsequent hearing. The hearing shall be fair and shall be held before one or more persons authorized by the exchange to conduct hearings pursuant to this section. The hearing shall be conducted in accordance with the requirements set forth in §§ 8.17(a)(4)–(9) and (b).