

Additions underlined.  
Deletions [bracketed].

Rules of NYSE Arca, Inc.

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**RULE 10 DISCIPLINARY PROCEEDINGS; SUSPENSION, CANCELLATION AND REINSTATEMENT**

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**Rule 10.0. Legacy Disciplinary Proceedings, Other Hearings and Appeals**

Rule 10.0 shall apply only to a proceeding for which the Exchange has served a Complaint under Rule 10.4, received a written offer of settlement under Rule 10.6, or for which a written statement or citation has been filed or served under Rule 10.11 or Rule 10.12, respectively, prior to May 27, 2019 and will continue to apply until such proceeding is final. Rule 10.0 shall also continue to apply to any ETP Holder, OTP Holder, OTP Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Rule 10.1(b) prior to May 27, 2019. Otherwise, the Rule 10.8000 Series and Rule 10.9000 Series will apply except that summary sanctions in options-related matters will continue to be governed by Rule 10.13 and appeals of Floor citations and summary sanctions will continue to be governed by Rule 10.11. Notwithstanding the preceding sentence, the Sanction[ing] Guidelines set forth in Rule 10.16 will continue to apply to all sanctions imposed in options-related matters.

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**Rule 10.16. NYSE Arca Sanctions[ing] Guidelines - Options**

[(a) Overview

The mission of the NYSE Arca, Inc. ("NYSE Arca" or "Exchange") is to provide a securities marketplace in which high standards of honor and integrity prevail and to promote and maintain just and equitable principles of trade and business. To this end, as a regulator, the NYSE Arca seeks to protect investors and strengthen market integrity through vigorous, even-handed, and cost-effective self-regulation. The NYSE Arca embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. To build public confidence in the financial markets, and as part of the NYSE Arca's regulatory mission, the NYSE Arca must stand ready to discipline OTP Holders, OTP Firms and Associated Persons, by imposing sanctions when necessary and appropriate to protect investors, OTP Holders, OTP Firms and the marketplace as a whole and to promote the public interest.

These Sanctioning Guidelines have been developed for use by the various Exchange bodies that adjudicate disciplinary actions, including the NYSE Arca Board of Directors, the Ethics and

Business Conduct Committee, Exchange Regulatory Staff, for in-house adjudications, (collectively, "Adjudicatory Bodies" or "Adjudicators"), in determining appropriate remedial sanctions. These Guidelines also may be used by parties to a disciplinary action in entering into a Stipulation of Facts and Consent to Penalty.

These Guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicatory Bodies to assist them in imposing sanctions consistently and fairly. The Guidelines recommend ranges for sanctions and suggest factors (called "Principal Considerations") that Adjudicatory Bodies may consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These Guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicatory Bodies may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these Guidelines.

To promote consistency and uniformity in the imposition of penalties, the following General Principles should be considered in connection with the imposition of sanctions in all cases. In addition, a list of Principal Considerations in Determining Sanctions, which enumerates generic factors that could be aggravating or mitigating in any given case, is included.

(b) General Principles Applicable to All Sanction Determinations.

- (1) Disciplinary sanctions are remedial in nature. Adjudicatory Bodies should design sanctions to prevent and deter future misconduct by the wrongdoer, to discourage others from engaging in similar misconduct, and to improve overall business and ethical standards of NYSE Arca members. The concept of remediation calls for the imposition of the least burdensome sanction necessary effectively to address the misconduct. The concept of deterrence requires the imposition of a remedial sanction of sufficient weight to discourage the violator and others similarly situated from repeating or engaging in the misconduct. Disciplinary sanctions should not be designed to punish for past misconduct. Rather, Adjudicatory Bodies should seek to achieve remediation and deterrence in imposing sanctions.
- (2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. Repeated acts of misconduct call for increasingly serious sanctions. It should be noted, however, that even if a named party has no history of misconduct, the misconduct at issue may be so egregious as to justify sanctions beyond the range recommended in these Guidelines. Adjudicatory Bodies should consider a named party's relevant disciplinary history in determining sanctions. Relevant history may include past misconduct similar to the misconduct at issue or past misconduct that, while unrelated, evidences prior disregard for regulatory requirements, investor protection, or the integrity of the industry as a whole. Regulatory incidents that are not relevant to the determination of disciplinary sanctions should not be considered.

- (3) Adjudicatory Bodies should tailor sanctions to address the misconduct at issue. In order to achieve remediation, Adjudicatory Bodies should impose sanctions tailored to the misconduct at issue. While adhering to the limitations with respect to sanctions imposed by the Securities Exchange Act of 1934 and the NYSE Arca's own rules, Adjudicatory Bodies may consider imposing somewhat unique sanctions if necessary to address the specific misconduct at issue. For example, an Adjudicatory Body may require an OTP Holder or OTP Firm to: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; or implement heightened supervision of certain employees.
- (4) Aggregation or "batching" of violations may be appropriate in certain instances for purposes of determining sanctions. Adjudicatory Bodies may treat several acts of misconduct as one "violation" for purposes of determining sanctions if the misconduct meets certain objective parameters. The parameters are intended to describe the circumstances in which Adjudicatory Bodies may choose to aggregate violations and are not intended to require that Adjudicators aggregate multiple violations in every instance in which the violations meet the parameters. Multiple violations may be treated individually such that a sanction is imposed for each violation, and multiple violations may be treated as aggravating and warrant higher sanctions. In determining whether to aggregate, Adjudicatory Bodies should consider the following factors:
  - (A) Whether the violations involved related activity and the same or similar interrelated rules or regulations. (If aggregated, the violations should not have involved materially different types of misconduct.)
  - (B) Whether the violations involved unintentional or negligent misconduct or manipulative, fraudulent, or deceptive intent. (If aggregated, the violations should not have involved manipulative, fraudulent, or deceptive intent.)
  - (C) Whether the misconduct resulted in injury to investors. (If investors were injured, but the misconduct did not involve manipulative, fraudulent, or deceptive intent and full restitution has been paid to all injured parties, an Adjudicatory Body may consider aggregating violations. Otherwise, violations involving customer harm should not be aggregated.)
  - (D) Whether the violations resulted from a single systematic problem or underlying cause that has been corrected. (If aggregated, the violations should have resulted from one cause and the cause should have been corrected.)
- (5) Adjudicatory Bodies should order restitution if necessary to remediate misconduct. Adjudicatory Bodies should order restitution when an identifiable party has suffered a quantifiable loss as a result of a named party's misconduct. Restitution is particularly appropriate when a named party has benefited from the misconduct. Furthermore, while restitution is an appropriate method of depriving a wrongdoer of ill-gotten gain, as discussed in the sixth principle, the amount of ill-gotten gain also may be used to

determine the amount of a disciplinary fine. Adjudicatory Bodies should calculate orders of restitution based on the actual amount of loss sustained by the injured party, as demonstrated by record evidence. In the event that the actual amount of any loss can not be determined by record evidence, Adjudicatory Bodies may calculate orders of restitution based on a reasonable calculation of loss. Orders of restitution may exceed the amount of the named party's ill-gotten gain. It is imperative that Adjudicatory Bodies include in written decisions a description of the method used to calculate restitution.

- (6) Adjudicatory Bodies may consider the amount of a named party's ill-gotten gain when determining the amount of a disciplinary fine. In cases in which the record demonstrates that a named party obtained a financial benefit from its misconduct, Adjudicatory Bodies may require disgorgement of the ill-gotten gain by fining away the amount of the financial benefit.
- (7) Adjudicatory bodies may require approved persons and other registered employees of OTP Holders or OTP Firms to requalify in any or all registered capacities. The remedial purpose of disciplinary sanctions may be served by requiring a named party who is a registered employee of an OTP Holder or OTP Firm to requalify by examination as a condition of continued employment in the securities industry. These types of sanctions are particularly appropriate in cases in which a named party's actions demonstrate a lack of knowledge or familiarity with the rules and laws governing the securities industry.
- (8) Adjudicatory Bodies may consider a named party's inability to pay in connection with the imposition of monetary sanctions when the party raises this issue. When raised by a named party, Adjudicatory Bodies may consider a proven bona fide inability to pay when determining monetary sanctions. The burden is on the named party to raise the issue of inability to pay and to provide evidence of inability. Proof of inability to pay need not result in a reduction or waiver of monetary sanctions, but could instead result in the imposition of an alternate payment option or alternate sanction.

(c) These General Principles are applicable to all sanctions determinations and should be considered by Adjudicatory Bodies in all cases. Consistency and uniformity are important in the application of disciplinary sanctions and, for this reason, these guiding principles are extremely important to the continued fairness of the NYSE Arca disciplinary process.

(d) Principal Considerations In Determining Sanctions. The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list other factors. As appropriate, Adjudicatory Bodies should consider case-specific factors in addition to those listed here and in individual guidelines.

- (1) The named party's relevant disciplinary history. (See General Principle No. 2).
- (2) Whether the named party accepted responsibility for and acknowledged the misconduct to an employer or OTP Holder or OTP Firm (in the case of an Associated Person of a

member or member organization) or a regulator prior to detection and intervention by the employer, OTP Holder or OTP Firm, or regulator.

- (3) Whether the named party voluntarily employed subsequent corrective measures, prior to detection or intervention by an OTP Holder or OTP Firm or employer (in the case of an Associated Person of an OTP Holder or OTP Firm) or a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.
- (4) Whether the named party voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.
- (5) Whether the named party demonstrated reasonable reliance on competent legal, compliance, or accounting advice.
- (6) Whether the named party engaged in numerous acts and/or a pattern of misconduct.
- (7) Whether the named party engaged in the misconduct over an extended period of time.
- (8) Whether the named party attempted to conceal misconduct or to lull into inactivity, mislead, deceive, or intimidate a customer, regulatory authorities, an employer, or OTP Holder or OTP Firm (in the case of an Associated Person of an OTP Holder or OTP Firm).
- (9) With respect to other parties, including the investing public and/or other market participants, (a) whether the named party's misconduct resulted directly or indirectly in injury to such other parties; and (b) the extent of the injury.
- (10) Whether the named party provided substantial assistance to regulators in its examination and/or investigation of the underlying misconduct, or whether the named party attempted to delay an investigation, to conceal information, or to provide inaccurate or misleading testimony or documentary information to the NYSE Arca or another regulator.
- (11) Whether the named party's misconduct was the result of an intentional act, recklessness, or negligence.
- (12) Whether the named party engaged in the misconduct at issue notwithstanding prior warnings from NYSE Arca staff, another regulator, or a supervisor (in the case of an Associated Person of an OTP Holder or OTP Firm) that the conduct violated NYSE Arca rules or applicable securities laws or regulations.
- (13) Whether the named party's misconduct resulted in the potential for monetary or other gain.

- (14) The number, size, and character of the transactions at issue.
- (15) The level of sophistication of the injured or affected customer.
- (16) Whether, at the time of the violation, the named OTP Holder or OTP Firm had developed reasonable supervisory, operational, and/or technical procedures or controls that were properly implemented.
- (17) Whether, at the time of the violation, the named OTP Holder or OTP Firm had developed adequate training and educational initiatives.
- (18) Whether the named OTP Holder or OTP Firm can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of its historical compliance record.
- (19) Whether the OTP Holder or OTP Firm with which a named party is/was associated disciplined the party for the misconduct at issue prior to regulatory detection.

(e) Specific Sanctioning Guidelines for Options Order Handling Rules.

(1) Firm Quotes - NYSE Arca Rule 6.86-O

(2) Priority Rules and Obligations of Market Makers - NYSE Arca Rules 6.37-O, 6.75-O and 6.76-O.

(A) Principal Considerations in Determining Sanctions.

- (i) See list of principal considerations applicable to all violations as set forth in NYSE Arca Rule 10.16(d).
- (ii) Whether the misconduct involved violations of rules intended to provide protection to customer orders.
- (iii) Whether misconduct resulted in the failure to execute a customer order and, if so, whether the named party remediated the misconduct.
- (iv) Whether this action is the first, or a subsequent disciplinary action with respect to similar violative conduct by the same OTP Holder, OTP Firm or Associated Person. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(B) Suggested Monetary Sanctions: \$10,000 to \$100,000.

(A) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to five years. In particularly egregious cases involving a pattern of misconduct and/or customer harm, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm.

(1) Best Execution - NYSE Arca Rule 6.46-O.

(A) Principal Considerations in Determining Sanctions.

- (i) See list of principal considerations applicable to all violations as set forth in NYSE Arca Rule 10.16(d).
- (ii) Whether the misconduct involved violations of rules intended to provide protection to customer orders.
- (iii) Whether a customer was disadvantaged because of the Floor Broker's failure to exercise due diligence.
- (iv) Whether the misconduct resulted in the failure to execute a customer order, if so, whether the wrongdoer remediated the misconduct.
- (v) Whether the wrongdoer acted with intent to disadvantage a customer.
- (vi) Whether this action is the first, or a subsequent disciplinary action with respect to similar violative conduct by the same OTP Holder, OTP Firm or Associated Person. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(B) Suggested Monetary Sanctions: \$10,000 to \$100,000.

(A) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to five years. In particularly egregious cases involving a pattern of misconduct and/or customer harm, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm.

(1) Trade Reporting - NYSE Arca Rule 6.69-O.

(A) Principal Considerations in Determining Sanctions.

- (i) See list of principal considerations applicable to all violations as set forth in NYSE Arca Rule 10.16(d).
- (ii) The extent of the abuse i.e. whether a pattern of abuse exists, and the number of transactions involved.
- (iii) Presence of intent, recklessness, or negligence.
- (iv) The nature of trade-reporting violation.
- (v) Whether the violative conduct affected discovery of information regarding market price.
- (vi) The amount of time beyond 90 seconds that elapsed before trade was reported.
- (vii) Whether the wrongdoer remediated the misconduct.
- (viii) Whether this action is the first, or a subsequent disciplinary action with respect to similar violative conduct by the same OTP Holder, OTP Firm or Associated Person. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(B) Suggested Monetary Sanctions: \$10,000 to \$100,000.

(A) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to five years. In particularly egregious cases involving a pattern of misconduct and/or customer harm, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm.

(f) Specific Sanctioning Guidelines for Recordkeeping and Financial Requirements Rules.

(1) Financial Reports - NYSE Arca Rule 4.11-O(b)(1)

(A) Principal Considerations in Determining Sanctions.

- (i) See list of Principal Considerations applicable to all violations as set forth in NYSE Arca Rule 10.16(d).
- (ii) Whether this action is the first, or a subsequent disciplinary action with respect to similar violative conduct by the same OTP Holder, OTP Firm or Associated Person.

As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(B) Suggested Monetary Sanctions: \$10,000 to \$100,000.

(C) Suspension, Expulsion, or Other Sanctions. For the first disciplinary action, consider a letter of caution to the named party. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to five years. In particularly egregious cases involving a pattern of misconduct, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm.

(g) Specific Sanctioning Guidelines for Rule 9-O Conducting Business with the Public.

(A) Principal Considerations in Determining Sanctions.

(i) See list of principal considerations applicable to all violations as set forth in NYSE Arca Rule 10.16(d).

(ii) Whether the misconduct involved violations of rules specifically intended to provide protection to public customers and their accounts, including but not limited to Rules 9.2-O(a)-(b), 9.6-O(a), 9.7-O(a)-(d), and 9.18-O.

(iii) Whether this action is the first, or a subsequent disciplinary action with respect to similar violative conduct by the same OTP Holder, OTP Firm or Associated Person. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

(B) Suggested Monetary Sanctions: \$10,000 to \$150,000.

(C) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to five years. In particularly egregious cases involving a pattern of misconduct, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm.

(h) Specific Sanctioning Guidelines Rule 11 - Business Conduct

(A) Principal Considerations in Determining Sanctions.

(i) See list of principal considerations applicable to all violations as set forth in NYSE

Arca Rule 10.16(d).

- (ii) Whether the misconduct involved violations of Rules 11.1 through 11.6 which are specifically intended to prevent actions that could be deemed detrimental to the welfare and protection of investors, or conduct or proceedings inconsistent with just and equitable principles of trade.
  - (iii) Whether this action is the first, or a subsequent disciplinary action with respect to similar violative conduct by the same OTP Holder, OTP Firm or Associated Person. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.
- (B) Suggested Monetary Sanctions: \$10,000 to \$150,000.
- (C) Suspension, Expulsion, or Other Sanctions. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to five years. In particularly egregious cases involving a pattern of misconduct, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm.]

#### Principal Considerations In Determining Sanctions

To promote consistency and uniformity in the imposition of penalties against OTP Holders, OTP Firms and covered persons as defined in Rule 10.9120(g), the following Principal Considerations in Determining Sanctions should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters, including letters of acceptance, waiver and consent, offers of settlement, formal disciplinary hearings, and summary sanctions in options-related matters governed by Rule 10.13 and appeals of Floor citations and summary sanctions governed by Rule 10.11.

These Principal Considerations are not intended to be absolute. Based on the facts and circumstances presented in each case, the various individuals with responsibility for the adjudication of disciplinary actions, including the CRO and his or her delegees, Hearing Panels, Extended Hearing Panels, Hearing Officers, the Committee for Review, and the Board of Directors (collectively, "Adjudicatory Bodies"), may consider aggravating and mitigating factors in addition to those listed below.

- (a) Disciplinary sanctions are remedial in nature. Adjudicatory Bodies, as applicable, should design sanctions to prevent and deter future misconduct by wrongdoers, to discourage others from engaging in similar misconduct, and to improve overall business standards of OTP Holders and OTP Firms. Adjudicatory Bodies, as applicable, may impose sanctions including expulsion, suspension, limitation of activities, fine, censure, suspension or revocation of one or more Trading Permits, or

- any other fitting sanction.
- (b) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. Adjudicatory Bodies, as applicable, should consider a party's relevant disciplinary history in determining sanctions.
- (c) Adjudicatory Bodies, as applicable, should consider prior similar disciplinary decisions (relevant precedent) in determining an appropriate sanction and may consider relevant precedent from other self-regulatory organizations.
- (d) Adjudicatory Bodies, as applicable, should tailor sanctions to address the misconduct at issue. For example, Adjudicatory Bodies, as applicable, may require an OTP Holder or OTP Firm to, among other things, retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; implement heightened supervision of certain employees; or requalify by examination in any or all registered capacities.
- (e) Adjudicatory Bodies, as applicable, may aggregate individual violations of particular rules and treat such violations as a single offense for purposes of determining sanctions. Aggregation may be appropriate when the Exchange utilizes a comprehensive surveillance program in the detection of potential rules violations. Aggregation may also be appropriate where the Exchange has reviewed activity over an extensive time period during the course of an investigation of matters disclosed either through a routine examination of the OTP Holder or OTP Firm or as the result of a complaint. Similarly, where no exceptional circumstances are present, the Exchange may impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.
- (f) Adjudicatory Bodies, as applicable, should evaluate the appropriateness of disgorgement and/or restitution in those cases where the amount of harm is quantifiable and the harmed party is identifiable.
- (g) Adjudicatory Bodies, as applicable, should consider contributions or settlements by a respondent or any related OTP Holder or OTP Firm to the harmed party as it relates to the conduct that is the subject of the disciplinary matter.
- (h) Adjudicatory Bodies, as applicable, may consider a party's inability to pay in connection with the imposition of monetary sanctions.

**RULE 10.9100. APPLICATION AND PURPOSE**

**Rule 10.9001. Effective Date of Rule 10.9000 Series**

Rule 10.0 shall apply only to a proceeding for which the Exchange has served a Complaint under Rule 10.4, received a written offer of settlement under Rule 10.6, or for which a written statement or citation has been filed or served under Rule 10.11 or Rule 10.12, respectively, prior to May 27, 2019 and will continue to apply until such proceeding is final. Rule 10.0 shall also continue to apply to any ETP Holder, OTP Holder, OTP Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Rule 10.1(b) prior to May 27, 2019. Otherwise, the 10.8000 Series and Rule 10.9000 Series will apply, except that summary sanctions in options-related matters will continue to be governed by Rule 10.13 and appeals of Floor citations and summary sanctions will continue to be governed by Rule 10.11. Notwithstanding the preceding sentence, the Sanction[ing] Guidelines set forth in Rule 10.16 will continue to apply to all sanctions imposed in options-related matters.

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