

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

Rules of BATS Exchange, Inc.

Chapter VIII. DISCIPLINE

Rule 8.17. Expedited Client Suspension Proceeding

(a) Initiation of Proceeding

(1) *Scope of Authority.* With the prior written authorization of the CRO or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the “Exchange” for purposes of this Rule 8.17) may initiate an expedited suspension proceeding with respect to alleged violations of Rule 12.15 (Layering and Spoofing Prohibited).

(2) *Service of Notice.* The Exchange shall initiate the proceeding by serving a notice on a Member or associated person of a Member (hereinafter “Respondent”). The Exchange shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Content of Notice.* The notice [also] shall state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

(A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts [or omissions] that constitute the alleged violation; and

(B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order’s issuance), which are set forth in sub-paragraph (d)(2) of this Rule).

(b) Appointment of Hearing Officers and Hearing Panel

(1) As soon as practicable after the Exchange initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 8.6.

(2) If at any time a Hearing Officer [or Hearing Panelist] determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a

Hearing Officer [or Hearing Panelist], the recusal and disqualification proceeding shall be conducted in accordance with paragraph (b) of Rule 8.6, except that:

([a]A) a motion seeking disqualification of a Hearing Officer [or Hearing Panelist] must be filed no later than 5 days after the announcement of the Hearing Panel; and

(B) the Exchange may file a brief in opposition to the Respondent's motion no later than 5 days after service thereof.

[(b) the Chairman of the Hearing Panel shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of Rule 8.6.]

(c) Hearing

(1) *When Held.* The hearing shall be held not later than 15 days after service of the notice [and filing] initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel [Hearing Officer] with the consent of the Parties for good cause shown. If a Hearing Officer [or Hearing Panelist] is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer [or Hearing Panelist] is appointed.

(2) *Service of Notice of Hearing.* A notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel [Hearing Officer]. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Authority of Hearing Officers.* [The]A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under paragraph (d) of Rule 8.6.

(4) *Witnesses.* A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(5) *Additional Information.* At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(6) *Transcript.* The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing

Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) *Record and Evidence Not Admitted.* The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in subparagraph (a)(3)(b) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the [Hearing Officer or the] Hearing Panel. The Office of General Counsel shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at Hearing.* If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Hearing Panel

(1) *Basis for Issuance.* The Hearing Panel shall issue a written decision stating whether a suspension order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel [Hearing Officer] with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

(A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) *Content, Scope, and Form of Order.* A suspension order shall:

(A) be limited to ordering a Respondent to cease and desist from violating Rule 12.15, and, where applicable, to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 12.15;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking; and

(D) include the date and hour of its issuance.

(3) *Duration of Order.* A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked [by the Exchange] pursuant to paragraph (e), below.

(4) *Service.* The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) Review by Hearing Panel

At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chairman of the Hearing Panel [Hearing Officer] with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) Violation of Suspension Orders

(1) *Sanctions for Failure to Comply.* If a Member, person associated with a Member or person subject to the jurisdiction of the Exchange fails to comply with a suspension order issued under this Rule, Exchange staff, after receiving written authorization from the Chief Regulatory Officer or such other senior officer as the Chief Regulatory Officer may designate, may issue a notice to such member or person stating that the failure to comply with the suspension order within seven days of service of the notice will result in a [suspension or] cancellation of membership or a [suspension or] bar from associating with any member.

(2) *Service of Notice.* Exchange staff shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person when counsel agrees to accept service for the member or person) by overnight courier or personal delivery. A copy of a notice under this Rule that is served on a person associated with a Member also shall be served on such Member. Service is complete upon mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(3) *Contents of Notice.* The notice shall explicitly identify the provision of the suspension order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the Exchange's action

will take effect and explain what the respondent must do to avoid such action. [In addition, the notice shall explain that a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.]

(g) Application to SEC for Review

Sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of [the] a suspension order, cancellation of membership or a bar from associating with any member, unless the SEC otherwise orders.

CHAPTER XII. TRADING PRACTICE RULES

12.15. Layering and Spoofing Prohibited

No Member shall engage in or facilitate layering or spoofing activity on the Exchange, as described in Interpretation and Policy .01 of this Rule, including acting in concert with other persons to effect such activity.

Interpretations and Policies

.01 Layering. For purposes of this Rule, layering activity shall include a frequent pattern in which the following facts are present:

- (a) a party enters multiple limit orders on one side of the market at various price levels (the “Layering Orders”); and
- (b) following the entry of the Layering Orders, the level of supply and demand for the security changes; and
- (c) the party enters one or more orders on the opposite side of the market of the Layering Orders (the “Contra-Side Orders”) that are subsequently executed; and
- (d) following the execution of the Contra-Side Orders, the party cancels the Layering Orders.

.02 Spoofing. For purposes of this Rule, spoofing activity shall include a frequent pattern in which the following facts are present:

- (a) a party narrows the spread for a security by placing an order inside the NBBO (the “Spoofing Order”); and

(b) the party then submits an order on the opposite side of the market (“Contra-Side Order”) that executes against another market participant that joined the new inside market established by the Spoofing Order.

.03 Applicability. For purposes of this Rule, layering activity and spoofing activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, layering activity and spoofing activity includes a pattern or practice in which all of the layering or spoofing activity is conducted on the Exchange as well as a pattern or practice in which some portion of the layering or spoofing activity is conducted on the Exchange and the other portions of the layering or spoofing activity is conducted on one or more other exchanges.
