

CHAPTER 12 DISCIPLINARY ACTION

PART A DISCIPLINARY POWERS

12.01 Interpretation

In this Chapter,

“Defaulting Participant” includes a Clearing Participant or a Registered Person(s) of the Clearing Participant who has been found to have breached any of the Rules.

“disciplinary proceedings” where the context permits includes appeal proceedings under Part D.

12.02 Disciplinary powers

The Clearing House may exercise its disciplinary powers under Part A of this Chapter 12 against a Defaulting Participant. The Clearing House's disciplinary powers include the taking of one or more of the following actions:

- (a) suspend the Defaulting Participant in accordance with the terms prescribed by the Clearing House;
- (b) strike a Defaulting Participant off the Register of CPs and RPs where the Defaulting Participant will immediately cease to enjoy the privileges of Participantship;
- (c) limit or disallow the access of the Defaulting Participant to any of the services or facilities of the Clearing House or suspend the Defaulting Participant's privileges or activities on such terms and for such period as the Clearing House may in its sole discretion determine, including in relation to any function that has been outsourced;
- (d) impose a fine not exceeding RM1 million on the Defaulting Participant;
- (e) reprimand (publicly or privately) the Defaulting Participant;
- (f) impose any restriction or condition in relation to the breach committed or on the activities that a Defaulting Participant undertakes;
- (g) impose one or more conditions for compliance including issuing a direction to take such steps to remedy or mitigate the breach, other than a direction to make restitution;
- (h) direct a Defaulting Participant to take appropriate action against any of the Defaulting Participant's employee or agents if such person caused the Defaulting Participant to commit the breach;
- (i) mandate education, training or such other types of programme as may be determined by the Clearing House to be undertaken or implemented by the Defaulting Participant for its employees;
- (j) impose any restriction, prohibition or requirement regarding the disposal, holding or dealing with any monies or assets of a client by a Defaulting Participant; or
- (k) any other action the Clearing House considers appropriate subject to consultation with the Commission.

12.03 Procedures

- (1) The Clearing House will determine the procedures applicable to any disciplinary proceedings taken under this Chapter. Such procedures may vary to adapt to the circumstances of any particular case.
- (2) The Clearing House is not bound by legal rules of evidence and procedure in any disciplinary proceedings under this Chapter.

12.04 Agreed settlement

- (1) A Defaulting Participant may, at any time before the Clearing House makes a decision, propose a settlement of the disciplinary action by agreeing to a set of facts, liability or penalty with the Clearing House.
- (2) The Clearing House may reject, accept or vary the proposed settlement based on terms that the Clearing House deems fit.
- (3) Where the Clearing House accepts the proposed settlement, the agreed settlement will be recorded as a decision of the Clearing House.
- (4) If the Clearing House is not agreeable to the proposed settlement, the proceedings under Part B of this Chapter 12 will apply.

12.05 Request for oral representations

- (1) A Defaulting Participant may request for an oral representation to make submissions or procure the attendance of witnesses or legal representation at such oral representation for proceedings commenced against the Defaulting Participant.
- (2) A request under Rule 12.05(1) must be submitted with:
 - (a) a Response as provided under Rule 12.10; or
 - (b) a Notice of Appeal as provided under Rule 12.15.
- (3) The Clearing House may, in its absolute discretion, allow or disallow any request made pursuant to Rule 12.04(1), upon such terms and conditions as the Clearing House deems appropriate.

12.06 Standard of proof

The Clearing House will not find an allegation proven unless the Clearing House is satisfied that the allegation is proven on the balance of probabilities.

12.07 Other rights

The exercise of powers in Rule 12.02 does not in any way prejudice the other rights of the Clearing House against a Defaulting Participant or any other person to whom these Rules are directed.

12.08 Acts or omissions of a Relevant Person

Where the acts or omissions of a Relevant Person would have been subject to these Rules had such acts or omissions been committed by the Clearing Participant, then such acts or omissions

are deemed to be committed by that Clearing Participant and disciplinary action may be taken against it.

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PART B DISCIPLINARY PROCEEDINGS

12.09 Requisite Notice for disciplinary proceedings

The Clearing House will serve on a Defaulting Participant against whom the disciplinary action is proposed to be taken, a written notice specifying the nature and particulars of the breach the Defaulting Participant is alleged to have committed ("Requisite Notice").

12.10 Responses to Requisite Notice

The Defaulting Participant may submit to the Clearing House a written response to the Requisite Notice ("Response") within the time stipulated in the Requisite Notice.

12.11 Notification of decision

After the conclusion of the disciplinary proceedings, the Clearing House will notify the Defaulting Participant in writing of the decision including the penalty imposed (if any).

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PART C EXPEDITED PROCEEDINGS

12.12 Scope of expedited proceedings

The Clearing House may initiate expedited proceedings against a Defaulting Participant against whom disciplinary action is proposed to be taken instead of the proceedings under Part B of this Chapter 12 in circumstances the Clearing House deems fit, such as in respect of a breach of these Rules which does not typically attract a penalty beyond:

- (a) a reprimand; or
- (b) a fine of RM 10,000.00; or
- (c) both the above.

12.13 Procedure of expedited proceedings

- (1) The Clearing House will notify the Defaulting Participant in writing that the matter will be proceeded with by way of expedited proceedings. The notice will specify the breach and penalty imposed for the breach (“Determination”).
- (2) The Defaulting Participant must, within the time specified in the Determination, inform the Clearing House in writing whether or not the Defaulting Participant agrees with the Determination.
- (3) A Defaulting Participant is deemed to have agreed with the Determination if the Defaulting Participant does not respond within the specified time.
- (4) If the Defaulting Participant agrees or is deemed to have agreed with the Determination, disciplinary action will be recorded as having been taken against the Defaulting Participant on the date of the Defaulting Participant’s agreement or upon expiry of the specified time.
- (5) If the Defaulting Participant agrees or is deemed to have agreed with the Determination, any fine imposed as a penalty for the breach must be paid:
 - (a) upon the Defaulting Participant informing the Clearing House in writing of his agreement with the Determination; or
 - (b) within the time specified in the Determination;as the case may be.
- (6) If the Defaulting Participant does not agree with the Determination, the matter will proceed under Part B of this Chapter 12.
- (7) The Defaulting Participant may, within the time specified in the Determination, submit a written response to the Determination as if the Determination is a Requisite Notice under Rule 12.09.
- (8) In deliberating the matter under Part B of this Chapter 12, the Clearing House is not bound by the Determination and may impose a higher penalty based on the facts or evidence presented during the proceedings under Part B of this Chapter 12.

12.14 No limitation

Nothing in Part C of this Chapter 12 prevents the Clearing House from proceeding with disciplinary proceedings under Part B of this Chapter 12 for any breach of a Rule.

PART D APPEAL

12.15 Right of appeal

- (1) In amplification of Rule 2.05, any party to the disciplinary proceedings taken under Part B of this Chapter 12 and Rule 12.13(6) who is dissatisfied with a decision resulting from the disciplinary proceedings may appeal against such decision in the manner specified in Rule 12.16 unless the decision was recorded pursuant to an agreed settlement under Rule 12.04 (“the Appellant”).
- (2) The Clearing House may suspend the enforcement of any action taken under Rule 12.02 that is the subject of the appeal until the disposal of the appeal.

12.16 Notice of appeal

The Appellant must, within the time stated in the notification of decision given under Rule 12.11, give to the Clearing House a notice (“Notice of Appeal”) that:

- (a) identifies the decision against which the appeal is made; and
- (b) sets out the ground(s) of the appeal together with the representations to justify the ground(s) relied upon.

12.17 Deliberation of appeal

- (1) An Appellant may produce evidence that was not presented at the initial disciplinary proceedings if:
 - (a) the evidence was not available at the time of the initial disciplinary proceedings; and
 - (b) the evidence would have been likely to have had a determining influence upon the decision appealed against.
- (2) The Appellant must produce the new evidence as stated in Rule 12.17(1) when submitting the Notice of Appeal.
- (3) The Clearing House may exercise its powers under Rule 11.03 and produce new evidence arising from the Notice of Appeal submitted by a Defaulting Participant.
- (4) The Clearing House may affirm, vary or set aside the disciplinary action appealed against.

12.18 Notification of decision on appeal

After the conclusion of an appeal, the Clearing House will notify the Defaulting Participant in writing of the decision of the appeal and such decision is final.

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PART E EFFECT OF DISCIPLINARY ACTION

12.19 General effect of disciplinary action

- (1) A Defaulting Participant must give effect to a decision made under Part B of this Chapter 12 or Rule 12.13 or a decision affirmed or varied under Rule 12.17 within the time stipulated by the Clearing House.
- (2) If a Defaulting Participant fails to give effect to or comply with such decision made, affirmed or varied, the Defaulting Participant is deemed to have committed a breach of these Rules and the Clearing House may take further action as stated under Rule 12.02.

12.20 Period of payment and effect of non-payment of fine

- (1) Without prejudice to Rule 12.19(2), a fine imposed by the Clearing House must be paid by the Defaulting Participant within the time stipulated in the notice under Rule 12.11 or Rule 12.18.
- (2) Pursuant to Rule 12.20(1) and Rule 12.13(5), a Defaulting Participant who fails to make payment within the stipulated time frame will be summarily suspended from its functions and activities.
- (3) Where the fine remains unpaid 7 days after the suspension under Rule 12.20(2), the Clearing House may at any time thereafter summarily terminate the Defaulting Participant's Participantship or registration, as the case may be, with the Clearing House.
- (4) A fine or any portion of a fine remaining unpaid by a Defaulting Participant is a debt owing by the Defaulting Participant to the Clearing House.

12.21 Effect of suspension or termination

- (1) A suspension imposed by the Clearing House upon the Defaulting Participant:
 - (a) takes effect on the date notified in the notice under Rule 12.11 or Rule 12.18 ("the said notice"); and
 - (b) remains for such period as specified in the said notice but the period may be extended by the Clearing House for such period as it considers appropriate.
- (2) Nothing in this Rule 12.21 is to be construed as releasing or discharging such Defaulting Participant from remaining liable in all respects to fulfill all its obligations pursuant to or under these Rules.
- (3) Any Defaulting Participant who has been suspended or terminated shall be subject to Rule 10.01, wherever appropriate.

[End of Chapter]