

Regulatory Circular RG96-20

Date: February 13, 1996

To: Members

From: Legal Department

**Re: Exchange Committees
Standards and Availability of Committee Minutes**

The following will discuss certain standards that members should adhere to when serving on Exchange committees and advises the membership as to access to minutes of the committees and the Board of Directors.

CONFIDENTIALITY

Committee members are advised that any communication, or disclosure of information to non-committee members regarding committee discussions or decisions is inappropriate, unless authorized or endorsed by the committee. Accordingly, the items discussed at committee meetings, as well as the comments of individuals present at such meetings, should be treated as confidential communications. Committee members should also maintain the confidentiality of any documents to which they may have access in the course of their committee service that are designated by the committee as confidential.

Exchange committees are an integral part of the operation of the Exchange and as such require sincere, open and impartial discussion by participants. Disclosure of committee proceedings to non-committee members, at any time, jeopardizes the committee structure of the Exchange. Such disclosure may limit sincere and honest participation of committee members and the free exchange of comments and ideas among committee members.

Committee decisions are generally appealable to the Appeals Committee*, the Board of Directors, and the SEC. Decisions could also be the subject of civil litigation. Committee members who fail to adhere to confidentiality standards could jeopardize their position on the committee as well as place the Exchange in a "conflict of interest" position in the event that the Exchange is required to represent committee members in a resulting litigation.

In the event that a committee member violates any of the confidentiality policies set forth above, the committee member and any member organization with which the committee member is associated may be subject to disciplinary action pursuant to Exchange Rule 4.1, Just and Equitable Principles of Trade, or to other appropriate action by the Exchange, including

* Chapter 19 of Exchange Rules provides procedures for review for persons aggrieved in an economic sense by Exchange action.

immediate dismissal from the Exchange committee(s) on which the committee member serves and a bar from future service on any Exchange committees.

RECUSAL

If a committee member believes that he/she may not be able to participate in a discussion or vote on an issue in a fair and impartial manner, because of a conflict of interest or for any other reason, the individual should disqualify him/herself from such discussion or vote. Procedurally, proper recusal requires (1) that the committee member announce at the meeting an intent to disqualify him/herself and (2) the minutes of the meeting reflect such disqualification from the discussion or vote and the absence of the committee member from the room, in most instances.

Disqualification may also be appropriate in order to avoid even the appearance of impropriety. Each case of disqualification must be decided on its own merits. However, recusal is ordinarily appropriate under the following circumstances:

- (1) if the committee member or a person or organization associated with the committee member could disproportionately benefit, directly or indirectly, from the discussion or vote.
- (2) if a financial or business relationship exists with an individual or entity that is the subject of the discussion or vote. This does not necessarily include occasional and non-material arm's length business.
- (3) if the committee member is engaged in the management of a clearing firm and the matter under consideration concerns the clearing firm or an individual or entity or person associated therewith that cleared through the clearing firm either at the time of the issue in question or at present.
- (4) if reasons of personal prejudice and/or bias, against or in favor of a person or entity, or any other reason could cause the committee member to be unable to decide the matter fairly and impartially.

Upon request, the Legal Department will assist any committee member who is uncertain as to whether or not he/she should disqualify him/herself. To this end, committee members are encouraged to advise the legal staff of business affiliations that may have an apparent conflict of interest.

MEETING MINUTES

Minutes of each meeting should be reviewed and approved by committee vote at the next committee meeting. Committee members are encouraged to revise inaccuracies and ensure that the minutes accurately reflect attendance, disqualifications and abstinence from discussions or votes, and committee determinations.

Committee minutes are subject to subpoena and are used to document the appropriateness of committee actions. In a review, committee minutes may be considered to determine if the committee fulfilled its obligation to act in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Exchange.

AVAILABILITY OF MINUTES TO MEMBERSHIP

Board of Directors meeting minutes and committee minutes are available for review by **all** members of the Exchange upon written request to the Legal Department. Such request should specify a particular time frame of interest. Exchange staff will also provide photocopies of the minutes upon written request. However, under certain circumstances, portions of the minutes may be deleted from the copies to protect confidentiality.

(Regulatory Circular RG92-13, Revised)