



## **Regulatory Circular RG10-81**

**DATE:** July 7, 2010

**TO:** Exchange Trading Permit Holders and Committee Members

**FROM:** Board of Directors

**RE:** Committee Standards and Procedures

This circular sets forth certain standards that Exchange committee members are required to adhere to in connection with their committee service and certain procedures that Exchange committees are required to follow in making committee decisions. The committee standards and procedures set forth in this circular apply solely to non-Board level committees.

### **Standards Applicable to Committee Members**

#### **Importance of Reading Committee Materials**

It is extremely important to the functioning of the Exchange's committee process that committee members carefully read all of the materials included in their committee orientation manuals and committee meeting packets. This includes, but is not limited to, any the rules and policies administered by the committee, committee minutes, and any rule filings reviewed by the committee.

In reviewing committee materials, committee members should ensure that the committee's minutes accurately reflect meeting attendance, the determinations made by the committee at each meeting, and any recusals of committee members from discussions or votes. Committee members should also let appropriate Exchange staff members know if in their view any draft rule filing or other document reviewed by the committee does not accomplish the intent of the proposal.

#### **Confidentiality Standards**

Committee members should maintain the confidentiality of all committee discussions and all information and documents provided to the committee. This confidentiality requirement does not apply to information or documents that are otherwise publicly available or that the committee and the Exchange determine may be disclosed. In addition, committee members should keep confidential the individual comments expressed at committee meetings by other committee members as well as how particular committee members voted with respect to particular issues before the committee.

Exchange committees are an integral part of the operation of the Exchange. Disclosure of confidential committee discussions, information, or documents to non-committee members can

jeopardize the committee's function and negatively impact the Exchange. In addition, disclosure of the particular views or votes of individual committee members may limit the sincere, open, and honest participation of committee members in the committee process and the free exchange of comments and ideas at committee meetings.

In the event a committee member violates any of the confidentiality standards set forth above, the committee member and any TPH 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 immediate dismissal from the Exchange committee(s) on which the committee member serves and a bar from future service on any Exchange committees.

### **Recusal Standards**

If a committee member believes that he or she may not be able to participate in a committee discussion or vote on a particular issue in a fair and impartial manner due to a conflict of interest or for any other reason, the committee member should recuse himself or herself from the discussion or vote. Recusal may also be appropriate in order to avoid even the appearance of a conflict of interest. A conflict of interest occurs when a personal or business interest of a committee member interferes in any way, or appears to interfere, with the interests of the Exchange. A committee member should disclose if he or she has or may have a conflict of interest with respect to a matter before the committee.

Procedurally, proper recusal requires (1) that the committee member announce at the committee meeting the committee member's intent to recuse himself or herself from the discussion or vote, (2) that the committee member generally leave the room during the discussion or vote, and (3) that the minutes of the committee meeting reflect the committee member's recusal from the discussion or vote and the absence of the committee member from the room, if applicable. Following the discussion or vote, the committee member may rejoin the committee meeting and participate in any other remaining committee business from which the committee member is not also recused.

Recusal from a discussion or vote 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 (however, this does not necessarily include 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 with an individual or entity) that cleared through the clearing firm either at the time of the issue in question or at the time of the discussion or vote; or

- (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.

Each case of possible recusal is factually unique and must be decided on its own merits. Upon request, the committee's legal counsel will assist any committee member in evaluating a potential conflict and determining whether or not he or she should recuse himself or herself from a discussion or vote. To this end, committee members should advise the committee's legal counsel of any affiliation or relationship that may give rise to an apparent conflict of interest with regard to that committee member's service on an Exchange committee.

## **Procedures Applicable to Committee Decision-Making**

### **Subcommittee Authority**

Committees are permitted to designate subcommittees to advise or make recommendations to the full committee concerning particular subjects or issues. However, in no event may a subcommittee take action or act on behalf of a committee (or be delegated the authority to do so by a committee), unless the subcommittee's authority to take action or act on behalf of a committee is specifically set forth in an Exchange rule, the committee's charter, or resolutions of the Board of Directors.

### **Quorum and Vote Requirements**

No action may be taken by a committee at a committee meeting unless a quorum of the committee is present at the meeting at the time the action is taken. Presence at a committee meeting includes in-person attendance and participation by conference telephone or other communication equipment that enables everyone participating in the meeting to hear each other.

Except as otherwise provided by the Exchange Bylaws, Exchange rules, a committee charter, or resolutions of the Board of Directors, a majority of the members of a committee shall constitute a quorum of the committee. The presence at a committee meeting of a committee member who is recused from a particular discussion or vote shall count toward the committee's quorum requirement.

Unless otherwise provided by the Exchange Bylaws, Exchange rules, or resolutions of the Board of Directors, the vote of a majority of the members of a committee voting at a meeting of the committee at which a quorum is present shall be the act of the committee.

### **Meeting Minutes**

The minutes of a committee meeting should reflect all of the decisions made by the committee at that meeting and should be approved by the committee.