

RULE 13 – ARBITRATION

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RULE 13 – ARBITRATION

Part A - General

13.01A Purpose

- a. This Rule and the processes set out herein are provided as a service for Exchange Participants and, where applicable, their customers. The Exchange provides the rule and procedures, the forms, administrative processes and physical facilities. The Exchange also appoints a committee (the 'Arbitration Committee') of persons with knowledge and expertise on matters relative to the Exchange's contracts and the underlying cash grain markets.
- b. All of the Costs of the Exchange relating to an Arbitration or an Expedited Arbitration process are to be paid by the parties to the Arbitration.
- c. Upon the conclusion of an Arbitration or Expedited Arbitration hearing the decision of an Arbitration may be inspected by any registered Participant of the Exchange, upon written request to the Corporate Administrator. The decision of the Panel will be posted on the Website.

13.02A Definitions

Unless otherwise indicated, the following terms, shall, for the purposes of this Rule, have the following meanings:

- a. "Allowable Claim" shall mean a claim arising directly from (i) any order or transaction for the purchase, sale, exercise or expiration of a futures contract or option executed, or to be executed, on or subject to the Rules of the Exchange; or (ii) cash market transactions which are part of, or directly connected with, any transaction executed on or subject to the Rules of the Exchange; or (iii) a Rule of the Exchange.
- b. "Claimant" shall mean an entity which asserts an Allowable Claim or a claim or grievance pursuant to this Rule;
- c. "Claims or Grievance" shall mean a dispute between a customer and a Participant which arises out of any transaction on or subject to the Rules of the Exchange, executed by or effected through a Participant, or any employee of such Participant;
- d. "Costs of the Exchange" – shall mean any and all costs, direct and indirect, incurred by the Exchange with respect to a hearing under this Rule, including, but not limited to, all administrative and staffing costs, legal costs for any lawyers the Exchange retains on its own behalf or on behalf of the Panel and court reporter's costs;
- e. "Customer" shall mean any person with a Claim or Grievance against a Participant or any employee of such Participant;
- f. "Panel" shall mean any three members of the Arbitration Committee, and two members of a Panel shall constitute a quorum;

- g. "Party to Expedited Arbitration" means an entity which is either (i) required to proceed to arbitration under Rules 19 or 22; or (ii) agrees to proceed to utilize the Expedited Arbitration processes set out in Part C to this Rule;
- g. Respondent" shall mean an entity against which an Allowable Claim or a Claim or Grievance is asserted pursuant to this Arbitration Rule.

13.03A

Initial Fee

- a. Each entity filing an Allowable Claim, Claim or Grievance, additional dispute or controversy, or Counterclaim, and each party to an Expedited Arbitration process shall pay the Exchange an Initial Fee on the basis set out herein. In the event that a Notice of Arbitration or Counterclaim is amended to increase the amount of the damages requested, an additional Initial Fee shall be paid to the Exchange at the time the pleadings are filed.

- (1) For matters proceeding under Part B of this Rule, the amount of the Initial Fee required shall be determined by the amount of relief requested in the Notice of Arbitration, and shall be paid by each of the parties at the time they file pleadings or the date of the hearing, whichever is the earlier.

<u>Relief Requested</u>	<u>Initial Fee Payable</u>
Up to CDN \$30,000	CDN \$3,000
Cdn \$30,001 and greater	10% of the amount of relief requested

- (2) For matters proceeding under Part C of this Rule, the amount of the Initial fee required shall be as set out below and shall be paid by each of the parties within two (2) Business Days of the service of Annexure 19D by the Buyer on the Exchange and the Warrant Issuer.

<u>Relief Requested</u>	<u>Initial Fee Payable</u>
Required arbitration under Rules 19 or 22	Cdn \$1,500 per Party to the Expedited Arbitration
For matters under Part B that proceed under Part C; Up to CDN \$30,000	CDN \$3,000
Cdn \$30,001 and greater	10% of the amount of relief requested

- b. The Initial Fee is a "down-payment" for the Costs of the Exchange. If the Costs of the Exchange, after the conclusion of an Arbitration hearing are less than the Initial Fee paid, the balance of the monies will be paid to the entity that paid the Initial Fee. The parties can make argument to the Panel that some or all of the Initial Fee paid by them be paid by the other party(ies) to the Arbitration.

13.04A Failure to Comply

The failure of any party to an Arbitration to comply with any of the requirements of this Rule, or with any demand or request of the Panel, or to adhere to any decision of a Panel, or Award made by a Panel, shall be deemed a violation of the Rules of the Exchange and shall, in addition to any other action the Exchange may take for any such violation, subject such party to such action by the Panel (including without limitation the entry of an award against such party) as it shall deem appropriate under the circumstances.

Part B – ARBITRATION

13.01B Jurisdiction

- a. Any Claim or Grievance by a Customer against a Participant, or any employee thereof, shall, if the Customer so elects, be settled by Arbitration. If such a Claim or Grievance is made, any counterclaim permissible under this Arbitration Rule shall, if asserted by such Participant or employee thereof, likewise be settled by Arbitration in accordance with this Arbitration Rule.
- b. Any Allowable Claim by any Participant against another Participant, whether originating before or during the Participant status of the parties, shall be settled by Arbitration in accordance with this Arbitration Rule, except where the Rules specifically designate that the Expedited Arbitration processes shall be utilized, in which case Part C of this Rules will apply. If an Allowable Claim is made, any Allowable Claim which may be asserted as a counter-claim under this Rule shall likewise be settled by Arbitration in accordance with this Arbitration Rule. Arbitration proceedings invoked pursuant to this Rule shall be independent of, and shall not interfere with or delay, the resolution of Customers' claims and grievances submitted for Arbitration.
- c. Once a Claim or Grievance, or an Allowable Claim, is commenced in accordance with subsection a) or b) hereto, any other disputes or controversies, regardless of their nature, between or among any two or more parties, shall, if agreed to by all parties involved, be settled by Arbitration in accordance with this Arbitration Rule. Arbitration proceedings invoked pursuant of this paragraph shall be independent of, and shall not interfere with or delay the resolution of Customers' Claims and Grievances submitted for Arbitration.
- d. Notwithstanding the foregoing, any Panel in its sole and absolute discretion, may decline to take jurisdiction of, or, having taken jurisdiction may at any time decline to proceed further with any additional disputes or controversies as set out in subsection (c) hereto.
- e. Provided all parties agree, any claim, grievance or allowable claim may be dealt with under Part C of this Rule – Expedited Arbitration, provided that the pleadings have been filed and the Initial Fee has been paid.

13.02B Notice of Arbitration

- a. A party wishing to utilize the Arbitration facilities herein contained, must sign and file a Notice of Arbitration, in the form approved by the Board from time

to time and in accordance with the Annex hereto. The Notice of Arbitration must be filed with the Exchange:

- (1) within one (1) year from the time the Allowable Claim or the Claim or Grievance arose with respect to matters pertaining to the delivery and/or shipment of commodities against futures contracts traded on the Exchange, and/or;
 - (2) within two (2) years from the time the Allowable Claim or the Claim or Grievance arose with respect to all matters, excluding only matters pertaining to delivery and/or shipment of commodities against futures contracts traded on the Exchange.
- b. The Claimant shall file the completed Notice of Arbitration in triplicate with the Corporate Administrator together with such Initial Fee as is required.
 - c. Upon receipt, the Exchange shall promptly serve a copy of the Notice of Arbitration on each Respondent and to the member of the Arbitration Committee nominated by the Claimant.

13.03B Answering Statement

- a. With respect to Arbitration, each Respondent shall, within ten (10) Business Days following the service of the Notice of Arbitration, file an Answering Statement, in triplicate, with the Corporate Administrator.

The Answering Statement shall be in the form approved by the Board from time to time and in accordance with the Annexures. The Answering Statement shall set forth the Respondent's position to the Notice of Arbitration, specifically addressing each fact, issue, allegation, and statement set out therein. Any fact, issue, allegation and statement not denied by a Respondent in the Answering Statement shall be deemed admitted.

- b. The Answering Statement may set forth one or more counterclaims against the Claimant provided that any such counterclaims arise out of the transaction or occurrence that is the subject of the Claimant's Allowable Claim or claim or grievance. Other counterclaims are permissible only if the Claimant agrees to the submission thereof after such counterclaims have arisen.
- c. The Corporate Administrator shall promptly serve the Claimant and the nominees to the Panel with copies of the Answering Statement.
- d. If an Answering Statement sets forth one or more counterclaims, the Claimant shall reply to all such counterclaims within ten (10) Business Days following delivery of the Respondent's Answering Statement. The Reply shall be filed in triplicate with the Corporate Administrator who will provide all parties with copies of all pleadings.

13.04B Choosing a Chairman for the Panel – Arbitration

Upon notice from the Corporate Administrator that they have been nominated, the two individuals nominated by the Claimant and the Respondent shall meet and agree to a third Panel member from the list of Arbitration Committee members, which third Panel member shall sit as the Chairman of the Panel. If, for whatever

reason, the two individuals cannot agree to a third member, the President or his designate, shall determine the third Panel member from a list of registered Participants of the Exchange. The Corporate Administrator shall advise the Claimant and the Respondent(s) of the names of the Panel.

13.05B Objection to Panel Members

- a. Any party objecting to any members of the Panel shall file such objection with the President or his designate within ten (10) Business Days of the receipt of notice of the nomination of the said Panel member, from the Corporate Administrator.

With respect to Expedited Arbitration, any party objecting to any members of the Panel shall file such objection with the President or his designate within one (1) Business Day.

The President or his designate shall then, in his sole discretion, determine whether changes in the composition of the Panel are appropriate, and if so, shall make such changes. Any vacancy occurring on the Panel for any reason shall be filled by an individual appointed by the President or his designate from the Participants of the Exchange. The parties shall be notified of the filling of such vacancy by the Corporate Administrator and may file objections to the new appointee to the Panel in accordance with the procedure set forth above.

13.06B Request for Documentation - Arbitration

- a. Any party may, no later than ten (10) Business Days prior to the first hearing session, notify the Corporate Administrator, in writing, of any pertinent documents or other information it seeks from another party. Upon receipt of such request, the Corporate Secretary shall notify the party from which the documents or information are sought. The parties shall thereafter cooperate in the voluntary exchange of such documents and information. Any objection to a request for the production of documents or other information shall be resolved by a preliminary motion brought to the Panel.
- b. The parties shall, within a time specified by the President or his designate, furnish each other and the Panel with a statement listing the witnesses expected to be called and the documents expected to be introduced into evidence, together with copies of such documents. Unless the Panel waives compliance with this requirement, no witness may testify and no documentary evidence may be introduced at the hearing unless listed in (and, in the case of documents, furnished with) such statement.

13.07B Arbitration Hearing

The Panel shall establish, on not less than ten (10) Business Days' written notice to the parties, the date, time and place of the hearing. Each Panel shall determine the procedures to be followed in any hearing before it, including the use of preliminary hearings to resolve discovery disputes, simplify the issues, and expedite the hearings, except that the following shall apply in every case:

- a. Each of the parties shall be entitled to appear personally at the hearing;
- b. Each of the parties, at his own expense, shall have the right to be represented by counsel at the proceeding, or any part thereof;

- c. Each of the parties shall be entitled to (i) prepare and present all relevant facts in support of the Allowable Claims, and/or claims and grievances, defences or counterclaims, and to present rebuttal evidence to such Allowable Claims, and/or claims or grievances, defences or counterclaims made by the other parties, (ii) examine the other parties, (iii) examine any witnesses appearing at the hearing, and (iv) examine all relevant documents presented in connection with the claim or grievance, or any defence or counterclaims applicable thereto;
- d. The formal rules of evidence shall not apply;
- e. No verbatim record shall be made of the proceedings, unless requested by a party who shall bear the cost of such record. If such a request is made, a stenographic transcript shall be taken, but not transcribed unless request by a party who shall bear the cost of such transcription.
- f. Contact of any kind between members of the Panel and the parties to the Arbitration are prohibited unless all parties are present. There is to be no ex-arte contacts by any of the parties with members of the Panel or by members of the Panel with any of the parties to the Arbitration.
- g. Prior to the closing of hearing, the Panel must hear from staff of the Exchange as to the Costs of the Exchange and must accept into evidence a written statement outlining the Costs of the Exchange as provided by staff of the Exchange. The evidence of staff on the issue of the Costs of the Exchange is not subject to review or cross-examination by the Panel or by the parties.
- h. The Panel shall have the power, on the request of any party or on its own motion, to require any person to testify and/or to produce documentary evidence in the proceedings.

13.08B

Decision of Panel

- a. (1) The Panel shall, within sixty (60) Business Days of the completion of a hearing, render an Award in writing and deliver a copy thereof to the Corporate Administrator who shall attend to service on all parties.
- (2) For Expedited Arbitration regarding determination of a Condition of Force Majeure - the Panel shall, within two (2) Business Days of the termination of the Arbitration hearing, render its decision in writing and deliver a copy thereof to the Corporate Administrator who shall attend to service on all parties.
- b. The Panel must provide in its Award that the Costs of the Exchange, as presented to them by staff at the hearing, are payable, in full, including interest where applicable, to the Exchange by specific award against one or more of the parties to the Arbitration.
- c. The Panel, in its Award, may grant any remedy or relief which it deems just and equitable, including, without limitation, the awarding of interest, solicitor costs and/or an Arbitration fee. Further, in any case wherein it is alleged that the claim or grievance arose from a violation of Exchange rules in the execution of a customer order and the Panel determines that such violation

occurred, the Panel shall award the customer the actual damages proximately caused by said violation.

- d. Any decision of an Arbitration Panel shall be final and binding upon each of the parties to the Arbitration, and judgement upon such award may be entered by any court having jurisdiction. In addition, any award, if not complied with within the time specified in the award, shall be enforceable by disciplinary proceedings pursuant to the By-Laws and Rules of the Exchange.
- e. Any Participant who is a party to an Arbitration conducted pursuant to the Rules shall notify the Corporate Administrator of any judicial proceeding based on the award.

13.09B Withdrawal of Claims

- a. A Notice of Arbitration may be withdrawn at any time before an Answering Statement is filed in accordance with the Rules. The Initial Fee paid by the Claimant, less the Costs of the Exchange, as determined by the Exchange, to the date of the withdrawal, shall be returned to the Claimant.
- b. If an Answering Statement has been filed, any withdrawal shall require consent of the party against which the Allowable Claim and/or claim or grievance is asserted, and the consent of the Exchange. The Initial Fee(s) paid, less the Costs of the Exchange, as determined by the Exchange, to the date of the withdrawal, shall be returned to the entities that paid the Initial Fee(s). In the event that the Costs of the Exchange exceed the Initial Fee(s) paid, the parties will not be entitled to withdraw until the Costs of the Exchange are paid.

13.10B Modification of Award

On written application to the Corporate Administrator by a party to an Arbitration, within twenty (20) Business Days after delivery of the Award or decision to the applicant, the Panel may modify the Award or decision if:

- a. There was a miscalculation of figures or a mistake in the description of any person, thing, or property referred to in the Award or decision; or
- b. The Panel has awarded upon a matter not submitted to it and the award may be corrected without affecting the merits or substance of the decision upon the issues submitted; or
- c. The award is imperfect in a matter of form, not affecting the merits or substance of the controversy.

Written notice by the party applying to modify the Award or decision shall be given to the other parties to the Arbitration by the Corporate Administrator. Written objection to the modification must be served on the Panel and the other parties to the Arbitration within ten (10) Business Days of receipt of the application. The Panel shall dispose of any application made under this section in writing, signed and acknowledged by the Panel, within thirty days after wither written objection to the modification has been served on it or the time for serving said objection has expired, whichever is earlier. The party may in writing extend the time for such disposition either before or after its expiration.

13.11B Punitive Damages

In the case of a claim or grievance arising from a violation of Exchange Rules in the execution of a customer order wherein it is determined by the Panel that the violation was willful and intentional, punitive damages may be awarded to the customer in an amount equal to no more than two times the amount of actual damages proximately caused by the violation.

PART C - EXPEDITED ARBITRATION

13.01C Jurisdiction

- a. Any claim or dispute referenced in or required to be dealt with by Arbitration under Rule 22 shall be dealt with in accordance with this Part.
- b. Any claim or grievance which would otherwise be dealt with under Part B of this Rule, may, with the consent of all of the parties to the process, be dealt with under this Part, provided all of the pleadings have been filed and the Initial Fee has been paid to the Exchange.

13.02C Initiating the Expedited Arbitration Procedures

- a. A party wishing to utilize the Expedited Arbitration facilities herein contained, must sign and file such form or forms as the Exchange may, from time to time, require, in accordance with the Annex hereto, within the following timeframes.
 - (1) For Default matters – within two (2) Business Days from the date of receipt of the accountings, pursuant to the provisions of Rule 22- Default Rules.
 - (2) For Determination of Condition of Force Majeure – within two (2) Business Days following receipt of the notice of Determination provided by the President of the Exchange, pursuant to the provisions of the respective Exchange contract Rule.

13.03C Choosing the Panel

The President, or in his absence his designate, shall select three (3) individuals from amongst the members of the Arbitration Committee for the hearing and the President or his designate shall determine which of the three members will be the Chairman.

13.04C Counsel Prohibited

The purpose of the Expedited Arbitration procedures is to provide for expeditious, cost efficient arbitration. For this reason, no party to the expedited arbitration procedures may utilize counsel for these purposes.

13.05C Process and Procedures

The Panel shall establish, on not less than five (5) Business Days' written notice to the parties, the date, time and place of the hearing. Each Panel shall determine the procedures to be followed in any hearing before it and those decisions shall be made in keeping with the purpose of the Expedited Arbitration which is to provide for expeditious, cost efficient determination of matters under dispute; provided that in every case the following shall apply;

- a. Each of the parties shall be entitled to appear personally at the hearing, but the failure of either party to appear will not result in a delay of the hearing;
- b. Each of the parties shall be entitled to (i) prepare and present all relevant facts in support of the claim and to present rebuttal evidence to any defences or counterclaims made by the other parties, (ii) examine the other parties, (iii) examine any witnesses appearing at the hearing, and (iv) examine all relevant documents presented in connection with the claim, or any defence or counterclaims applicable thereto;
- c. The formal rules of evidence shall not apply;
- d. For hearings pursuant to Rule 22, the panel shall make reference to the Rules as to the matters at issue and shall be bound by the requirements of the said Rules;
- e. No verbatim record shall be made of the proceedings, unless requested by a party who shall bear the cost of such record. If such a request is made, a stenographic transcript shall be taken, but not transcribed unless request by a party who shall bear the cost of such transcription.
- f. Contact of any kind between members of the Panel and the parties to the Arbitration are prohibited unless all parties are present. There is to be no ex-parte contacts by any of the parties with members of the Panel or by members of the Panel with any of the parties to the Arbitration.
- g. Prior to the closing of the expedited arbitration hearing, the Panel must hear from staff of the Exchange as to the Costs of the Exchange and must accept into evidence a written statement outlining the Costs of the Exchange as provided by staff of the Exchange. The evidence of staff on the issue of the Costs of the Exchange is not subject to review or cross-examination by the Panel or by the parties.

13.06C

Decision of Panel

- a. The panel shall, within thirty (30) Business Days of the completion of the hearing, render a written decision and deliver a copy thereof to the Corporate Administrator who shall attend to service of same on all of the parties.
- b. The panel shall, for matters respecting a Condition of Force Majeure, render a written decision within two (2) Business Days of the completion of the Arbitration hearing, and deliver a copy to the Corporate Administrator who will attend to service of same on all of the parties.
- c. The Panel must provide in its written decision that the Costs of the Exchange, as presented to them by staff at the hearing, are payable, in full, including interest where applicable, to the Exchange by specific award against one or more of the parties to the Arbitration.
- d. The Panel, in its Award, may grant any remedy or relief which it deems just and equitable, including, without limitation, the awarding of interest, and/or an Arbitration fee.