

parties to the dispute on where to stand until the outcome of further proceedings under this Rule. This temporary resolution may be revised by the individual(s) issuing it, but is otherwise not subject to appeal.

(e) *Hearing Requests and Hearing Fee.* If the Chairman or the Chairman's designee is unable to mediate an amicable resolution of the dispute among the members involved, any of them may request a hearing in the dispute by completing and submitting a Hearing Request form to the Office of the Secretary along with the payment of a Hearing Fee. The amount of the Hearing Fee shall be a minimum of one thousand dollars (\$1,000) per member, and may be greater under certain circumstances set forth in this subsection. The Exchange may increase the Minimum Hearing Fee periodically pursuant to Exchange Rule 2.22 in order to maintain the Minimum Hearing Fee at a level that the Exchange deems sufficient to encourage amicable resolution of crowd space disputes. Upon receipt of the Hearing Request form and Hearing Fee, the Office of the Secretary shall instruct the Exchange to collect the appropriate Hearing Fee from each additional party to the dispute pursuant to Exchange Rule 3.23. For any party who has previously been a party to a crowd dispute resolution hearing within the past twelve months, the Hearing Fee that party will pay for being a party to a subsequent hearing within twelve months of the last hearing will be twice the Hearing Fee that party paid for the previous hearing. After the hearing on the dispute is held and all rights of appeal are exhausted, only the prevailing party in the dispute shall obtain a refund of the Hearing Fee from the Exchange. A prevailing party who becomes a party in a subsequent hearing within twelve months of the hearing in which he prevailed shall not pay a higher Hearing Fee because of the hearing in which he prevailed.

(f) *Limitations on Hearing Requests.* No member may request a hearing involving the same parties that participated in a prior hearing unless the requesting member makes an adequate preliminary showing in his subsequent hearing request that new circumstances warrant another hearing involving the same parties, based upon the Crowd Space Dispute Resolution Guidelines contained in this Rule. The Chairman shall exercise sole and final judgment as to the adequacy of this preliminary showing.

(g) *CSDR Panel.* After the member submits his Hearing Fee to the Office of the Secretary, the Chairman shall select a Crowd Space Dispute Resolution

Panel ("Panel") composed of seven Exchange members to hear and resolve the dispute. The Chairman shall select two members of the Panel from members of the Chairman's Floor Procedure Committee (other than the Chairman himself), and four members of the Panel from members of the Exchange who are not members of the Chairman's Floor Procedure Committee. Two of the latter four members of the Panel shall be members who trade in the trading station where the dispute has arisen and two shall be members who do not trade in the trading station where the dispute has arisen. In selecting the Panel members who are not members of the Chairman's Floor Procedure Committee, preference will be given to members who serve on another Floor Procedure Committee or a Market Performance Committee. Notwithstanding such preference, the selection of all Panel members will be according to the sole discretion of the Chairman. The seventh Panel member shall be the Chairman of the Floor Officials Committee, or another member of the Floor Officials Committee designated by the Chairman of the Floor Officials Committee. The Chairman shall also designate the Panel member who shall serve as the Panel Chairman. In the event the Chairman must recuse himself from the dispute (see subsection (h) below), then the Vice Chairman of the Chairman's Committee will designate the Panel and the Panel Chairman. If the Vice-Chairman of the Chairman's Committee must also recuse himself, then the Vice-Chairman of the Exchange will designate the Panel and the Panel Chairman.

(h) *Recusals and Challenges of Panel Members.* The Exchange's recusal rules and policies shall apply with respect to participation by the Chairman, Panel members, and others in the crowd space dispute resolution process pursuant to this Rule. Parties to the dispute shall be informed of the composition of the Panel, as well as the date, time, and place of the hearing, at least 72 hours prior to the scheduled hearing in the matter by the Chairman. A Party may challenge the selection of one or more Panel members no later than 48 hours prior to the scheduled hearing in the matter by providing to the Chairman or the Panel Chairman a brief written statement explaining why the challenged Panel member has a conflict of interest or any other reason that would make the Panel member unable to participate in a fair and impartial manner. Notice of any replacement Panel member will be provided to the parties no later than 24 hours prior to

the scheduled hearing. A Party may challenge the selection of any replacement Panel member no later than 8 hours prior to the scheduled hearing. The Chairman shall have sole and final authority to rule on any challenge and replace any Panel member.

(i) *Hearings.* The hearing shall be held at such time and place as may be designated by the Panel. In hearings before the Panel, the Parties to the dispute will be allowed to present witnesses and/or documentary evidence to argue their claim, provided that they have furnished a list of all such witnesses and a copy of all such documents to the Panel Members and to all opposing parties at least 48 hours prior to the date of the hearing. The legal counsel to the Chairman's Committee, or another attorney designated by the legal counsel to the Chairman's Committee, shall act as legal counsel to the Panel. The Panel shall determine all questions concerning admissibility of evidence, and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The Panel shall decide any issues of fact based on the evidence admitted at the hearing, and shall apply the Crowd Space Dispute Resolution Guidelines set forth below to each dispute. The party receiving at least a majority vote by the Panel will prevail.

(j) *Crowd Space Dispute Resolution Guidelines.* In resolving a crowd space dispute, the Panel's guiding principles shall be: (i) to determine what shall "best promote a liquid and competitive market", (ii) to give no preference to market-makers, floor brokers, or representatives of DPMs merely because of their status as such, and (iii) to recognize and apply the principles that no member has any ownership "rights" in any crowd space, and that no member may sell or assign any supposed "right" to use a particular space in a trading crowd. The Panel shall examine the following factors and determine, in the Panel's sole judgment, how each relates to each of the parties competing for the space (the numerical ranking of the factors does not necessarily indicate the relative importance to be given to any particular factors in any particular case):

1. *Quality and Quantity of Business:*

The Panel shall review the quality and quantity of business that each party to the dispute conducts. Evidence of the quality and quantity of each party's business shall include, but is not limited to, evidence of the average daily number of contracts traded, the percentage of transactions that are traded in-person,