

<b>Rule Title</b>	Rule on OTC Member State Default and Non-Compliance
<b>Rule History</b>	<ul style="list-style-type: none"> <li>• Drafted by Rules Committee: November 18, 2025</li> <li>• Reviewed by OTCC Executive Committee: February 9, 2026</li> <li>• Public Comment Period: XXXX</li> <li>• Voted by OTCC: XXXX</li> </ul>
<b>Rule Purpose</b>	To further outline and clarify the requirements of OTC member states' compliance with the OTC legislation
<b>Public Comment Instructions</b>	Submit public comments via email to <a href="mailto:executivedirector@otcompact.gov">executivedirector@otcompact.gov</a> . Use the subject line "Public Comment for Rule on OTC Member State Default and Non-Compliance." Or, you may attend the meeting at which the rule will be discussed and voted on. Written comments must be received by close of business on XXXX

## ***Chapter 8: Member State Default and Non-Compliance***

### ***§1: Definitions***

A. "Party state" means a state that is a part of a dispute.

### ***§2: Special Note***

None noted

#### ***Rule 8.1***

##### ***Dispute Resolution Process – Informal, Mediation, and Arbitration:***

A. The Delegate in each member state shall enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The Commission supports collaborative efforts to resolve disputes or controversies between and among all member states. All affected parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (B) and (C) of this rule.

- i. Any member state may submit a written request to the Executive Committee for assistance in interpreting the law, rules, and policies of the Compact. The Executive Committee may seek the assistance of the Commission's legal counsel in interpreting the Compact. The Executive Committee shall issue the Commission interpretation of the Compact to all parties to the dispute.
- ii. A member state that is party to a dispute may request the submission of a matter in controversy to mediation. Mediation shall be conducted by a mediator appointed by the Executive Committee from a list of mediators approved by the National Association of Certified Mediators, unless a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.

B. When disputes among party states are unresolved through informal attempts, the Commission shall request assistance from the Executive Committee.

- i. It is the duty of the Executive Committee to address disputes between or among the member states concerning the Compact when informal attempts between the member states to resolve disputes have been unsuccessful.

- ii. The Executive Committee, on behalf of the Commission, in the reasonable exercise of its discretion, has the authority to assist in the resolution of disputes between and among member states concerning the Compact. This rule defines the course of action the Executive Committee may take when such disputes cannot be informally resolved and the matter is received by or referred to the Executive Committee.

C. Disputes between two (2) or more member states which cannot be resolved through informal resolution or through the Executive Committee may be referred to an arbitration panel.

D. Informal Resolution

- i. The Delegate of the state disputing another member state's interpretation or application of the Compact shall contact the Delegate of the member state with which the dispute has arisen. A written statement describing the situation should be provided and sufficient time allowed for response and opportunity for the other Delegate to review and investigate the issues raised in the dispute.
- ii. If interpretation of the Compact is necessary, the Delegate shall contact the Executive Committee and request assistance in interpreting relevant provisions. This communication to the Executive Committee should be made through the Compact Executive Director.
- iii. The Delegate raising the concern shall document attempts to resolve the issues.
- iv. If all issues are resolved to the satisfaction of all party states involved, no further action is required.

E. Mediation

- i. A state that is a party to a dispute may request, or the Executive Committee may require, the submission of a matter in controversy to mediation.
- ii. If a member of the Executive Committee is a party to the dispute, that individual must recuse themselves from participating in the matter.
- iii. Mediation shall be conducted by a mediator appointed by the Executive Committee from a list of mediators approved by the National Association of Certified Mediators, or a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.
- iv. If all issues are resolved through mediation to the satisfaction of all party states involved, no further action is required.

F. Executive Committee Resolution

- i. Member states shall report to the Executive Committee, through the Compact Executive Director, issues pertaining to disputes concerning the interpretation or application of the Compact in a timely fashion.
- ii. If the Executive Committee determines that the dispute arises from non-compliance with the Compact, the Committee may, in its discretion, reclassify the dispute as a non-compliance case and will provide a written notice to all parties of the dispute citing the allegation(s) of non-compliance and follow the procedures in the Bylaws and as provided in **Section 11 of the Compact**.

- iii. In the event there are factual and/or legal issues to be resolved, the states involved in the dispute shall provide written responses regarding the factual and/or legal issues in dispute and the position of each party to the dispute on those issues to the Executive Committee within thirty (30) days after receipt of the report referenced in paragraph (D) of this rule for distribution to the Executive Committee.
- iv. Upon receipt of the party states' responses, the Executive Committee shall develop a dispute resolution proposal or plan within sixty (60) days and submit the proposal or plan to the party states unless all parties agree that a longer period of time is needed to address the issues in dispute.
- v. Any controversy or dispute not resolved in accordance with paragraphs (D) through (F) of this rule may result in dispute arbitration, as recommended by the Executive Committee pursuant to paragraph (G) of this rule.

#### G. Arbitration

- i. In the event of a dispute between states that cannot be resolved through informal means, and upon the recommendation by the Executive Committee, the Delegate of the initiating state(s) shall submit an Arbitration Request form to the Compact Executive Director with a copy to be sent by the initiating state to the other party state(s) involved.
- ii. Each state party to the dispute and the Executive Committee shall submit a signed Arbitration Agreement form which shall include:
  - a. Consent that the decision of the majority of the arbitrators is final and binding;
  - b. The name of an appointee representing each state, unless more than two (2) states are parties, on an arbitration panel. In the event there are more than two (2) states that are parties to the dispute, the parties must agree on an arbitrator selected by the state or states arguing either the affirmative or the negative of the issue in dispute so that only one (1) arbitrator is selected by the state or states on either side of the controversy. In the event an agreement cannot be reached, such selection shall be made by the Executive Committee.
  - c. The name of a third arbitration panel appointee mutually agreed upon and independent of all the states involved in the dispute.
  - d. The Compact Executive Director shall coordinate the arbitration process.
  - e. Pursuant to paragraph G.i.i.b of this rule, appointment of the arbitration panel shall be completed by the party states involved within thirty (30) days of the decision to appoint a panel.
  - f. All involved states shall agree on arbitration procedures, including a date and location for the arbitration to take place which shall be within forty-five (45) days of the appointment of the arbitration panel. In the event the parties

cannot agree, the arbitration panel shall make these and other procedural decisions.

- g. The panel shall render a decision within forty-five (45) days of the completion of the arbitration.
- h. The panel shall forward its decision to the Compact Executive Director and Chair of the Commission and to each involved party state within seven (7) days of its decision.
- i. The decision of the arbitration panel shall be final and binding.
- j. In the event arbitration is necessary, and unless otherwise agreed by the parties, at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of such arbitration, including reasonable attorneys' fees, to the extent permitted by state law of the prevailing party state.
- k. Arbitration award decisions may be enforced in a court of competent jurisdiction.

The process for dispute resolution among party states is:

**Figure 1: OTCC Member State Dispute Resolution Process**



*At all points in the process, the OTCC's legal counsel will be consulted for next steps.*

## **Rule 8.2**

### **Compliance and Enforcement**

- A. The Delegate in each party state shall enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The Commission supports voluntary, collaborative efforts to resolve compliance and enforcement issues in lieu of formal dispute resolution procedures or other legal enforcement action between and among all Compact party states. All affected parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (E) through (G) of rule 8.2 and paragraphs (E) and (F) of this rule.
  - i. Any party state may submit a written request to the Executive Committee for assistance in interpreting the Compact. The Executive Committee may seek the assistance of legal counsel in interpreting the Compact, particularly concerning compliance and enforcement. The Executive Committee's interpretation of the Compact will be issued in writing to all parties to the dispute.

- ii. At the discretion of the Executive Committee, appropriate technical assistance and training may be provided to any party state seeking to voluntarily address a compliance issue.
- B. When compliance or enforcement is unresolved through informal attempts, the Delegate shall request assistance from the Executive Committee.
  - i. It is the duty of the Executive Committee to address alleged substantive or recurrent violations of the Compact when informal attempts to attain compliance have been unsuccessful.
  - ii. The Commission, in the reasonable exercise of its discretion, shall enforce the Compact.
- C. Compliance and enforcement issues that cannot be resolved through informal resolution or through the Executive Committee shall be referred to an arbitration panel or other appropriate legal action as provided in [Section 11 of the Compact](#) at the discretion of the Executive Committee.
- D. Informal Resolution
  - i. When an alleged violation of the Compact comes to the attention of the Compact Executive Director or Executive Committee, a written statement describing the situation should be provided, and sufficient time allowed for response and opportunity for other Delegate(s) to review and investigate the issues raised in the dispute. The Compact Executive Director, on behalf of the Executive Committee, shall contact the Delegate of the state(s) alleged to be in non-compliance with the Compact and, when applicable, the Delegate of the state alleging non-compliance with the provisions of the Compact.
  - ii. If the party state alleged to be in non-compliance with the Compact requires assistance with interpretation of the Compact, the Delegate of that state, or the state's legal representative may contact the Executive Committee to request assistance in interpreting relevant Compact provisions and identifying steps to achieve compliance.
  - iii. The Executive Committee may consult with legal counsel and shall document efforts to resolve the issues.
  - iv. If all issues are resolved to the satisfaction of the Executive Committee and the state(s) involved, the Compact Executive Director shall prepare a written report to document the resolution, and no further action is required.
- E. Executive Committee Resolution
  - i. In the event that informal resolution of alleged non-compliance is not possible, the Compact Executive Director shall notify the Executive Committee and furnish a report of all issues pertaining to noncompliance allegations, including details of informal resolution efforts, in a timely fashion.
  - ii. If the Executive Committee determines that a state is not in compliance with the Compact, the Executive Committee shall provide a written notice to the state(s) citing the specific allegation(s) of non-compliance or default.

- iii. The state(s) shall provide a written response regarding the alleged default or noncompliance to the Executive Committee within forty-five (45) days.
- iv. The Executive Committee, Compact Executive Director, and legal counsel shall develop and propose a plan for voluntary resolution of the allegation(s) of default or non-compliance within sixty (60) days, which may include technical assistance and training, and submit such plan to the involved state(s) for approval unless all parties agree that a longer period of time is needed to address the default/noncompliance or related issues.
- v. If the state alleged to be in non-compliance or default does not agree with the Executive Committee's proposed plan for resolution, or if the state fails to cure the default or non- compliance after initially agreeing with the Executive Committee to follow a remediation plan, the Executive Committee may conduct an investigation to examine any evidence relevant to the allegation(s). Such evidence may include, but is not limited to, statements and/or testimony of witnesses, documents, and other information. An investigator may be appointed by the Executive Committee to conduct the investigation.
- vi. The Commission shall bear the expense of any investigation.
- vii. The state alleged to be in non-compliance or default will be informed by the Executive Committee in writing if additional incidents of apparent non-compliance are discovered during the course of the investigation.
- viii. All information obtained during the investigation, and reports prepared by the Commission, shall be confidential and not subject to public disclosure unless otherwise required by the laws of any state involved in the dispute.
- ix. The state alleged to be in non-compliance will be provided an opportunity to submit a written response to the preliminary findings within twenty (20) days, including documentary evidence, and to meet with the investigator, if any, at the expense of the Commission.
- x. Within forty-five (45) days after the conclusion of the investigation, the Executive Committee or its investigator shall prepare a written report including a summary of factual findings. The report is provided to the state who is the subject of the investigation for review and comment, including the opportunity to provide corrections to the report, as appropriate. Any comments and/or corrections are returned to the Executive Committee, through the Compact Executive Director, within fourteen (14) days of issuance of the initial report.
- xi. After review of the response of the state alleged to be in non- compliance, the Executive Committee shall determine, based on a preponderance of the evidence standard, violation(s), if any, of the Compact. If the Executive Committee substantiates the allegations based on the evidence and legal authorities cited, the Executive Committee shall schedule a conference, either in person or by telephonic or electronic means, with the non-compliant state's Delegate, Assistant Attorney

General (or other legal representative), and Presiding Officer of the State's Licensing Board (or designee) to determine if the violations may be remedied through training, technical assistance, or other voluntary means within forty-five (45) days, unless all parties agree that a longer period of time is needed to address the default/non-compliance.

- xii. Any compliance or enforcement issue pursuant to this section not resolved may result in formal dispute arbitration, or other appropriate enforcement action pursuant to Section 10. of the Compact, as determined by the Executive Committee.
- xiii. Any member(s) of the Executive Committee whose state is involved in any compliance or enforcement issue shall be recused from consideration, discussion, or voting on any such case.

#### F. Dispute Arbitration

- i. In the event that a member state's Compact default/non-compliance cannot be resolved through the procedures described in [Chapter 8](#) of the rules, the Executive Committee may order arbitration before a three (3) member arbitration panel for determination of the default/non-compliance and enforcement of the Compact.
- ii. Each involved state shall submit a signed Arbitration Agreement form which shall include:
  - a. Consent that the decision of the majority of the arbitrators is final and binding;
  - b. The name of an appointee to the arbitration panel selected by the state(s) alleged to be in default/non-compliance;
  - c. The name of an appointee to the arbitration panel selected by the Commission, or
  - d. A suggested arbitration panel appointee mutually agreed upon by all parties and independent of the involved state(s).
- iii. The Compact Executive Director shall coordinate the arbitration process.
- iv. Selection of the panel of arbitrators shall be completed, at the direction of the Compact Executive Director, within forty (40) days of the decision to appoint a panel.
- v. All parties shall agree on a date for the arbitration to take place, as well as applicable deadlines and procedures for any necessary discovery. In the event no agreement can be reached, these and other procedural decisions shall be made by the arbitration panel.
- vi. The location of arbitration shall be the principal offices of the Commission.
- vii. The panel shall render a decision within forty-five (45) days of the completion of the arbitration based upon the facts as stipulated, or proven by preponderance of the evidence at any hearing, and as required under the provisions of the Compact and any other applicable statutes, regulations and/or case law.

- viii. The panel shall forward its decision to the Chair of the Commission, via the Compact Executive Director, and to each involved party state within twenty-one (21) days of its decision.
- ix. The decision of the arbitration panel is final and binding.
- x. Unless otherwise agreed by the parties, and at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of the arbitration, including reasonable attorneys' fees, if permitted by the laws of the prevailing state.

### Rule 8.3

#### Enforcement Remedies against a defaulting state

- A. Notwithstanding the provisions of paragraphs (D) through (G) of rule 8.1 and paragraphs (D) and (E) of rule 8.2, if the Commission determines that any state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, or the provisions of the Bylaws or any duly promulgated rules, the Commission may impose any or all of the following penalties:
  - i. Remedial training and technical assistance as directed by the Commission;
  - ii. Damages or costs in such amounts as are deemed to be reasonable as fixed by the Commission;
  - iii. Suspension of membership in the Compact; and
  - iv. Termination of membership in the Compact.
    - a. Suspension and termination shall be imposed only after all other reasonable means of securing compliance under the Bylaws and rules have been exhausted.
    - b. Notice of suspension or notice of termination shall be sent by the Commission in accordance with the Bylaws.
- B. The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by this Compact, Commission Bylaws, or duly promulgated rules. The Commission shall notify the defaulting state in writing of the penalty imposed by the Commission on the defaulting state pending a cure of the default within a reasonable timeframe. The Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this Compact shall be terminated from the effective date of termination.
- C. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.
- D. The Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Commission and the defaulting state.

E. Reinstatement following termination of any party state requires both a reenactment of the Compact by the defaulting state and the approval of the Commission pursuant to the rules.

The process for default remediation for non-compliant states is:

**Figure 2: OTCC Member State Default (non-compliance) Remediation Process**



*At all points in the process, the OTCC's Legal Counsel will be consulted for next steps.*

**Rule 8.4**

**Judicial Enforcement**

The Commission may also, by majority vote of the members, initiate legal action in the United States District Court for the **District of Columbia** or, at the discretion of the Commission, in the United States District Court **for the Eastern District of Virginia**, to enforce compliance with the provisions of the Compact, its duly promulgated rules, and Bylaws, against any member state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

**Adopted XXX; Effective XXX**  
**Authority: §3 & §10 of the OTC Legislation**