



April 6, 2006

**Via Electronic Mail**

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: CBOE Futures Exchange, LLC Rule Certification  
Submission Number CFE-2006-06

Dear Ms. Webb:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission ("Commission") under the Act, CBOE Futures Exchange, LLC ("CFE" or "Exchange") hereby submits (i) the Regulatory Services Agreement ("RSA"), dated as of December 27, 2005, by and between CFE and National Futures Association and (ii) new CFE Rule 216 ("Rule") relating to the RSA. The RSA and the Rule will become effective on April 10, 2006 in that the RSA will be implemented on that date.

CFE is not aware of any substantive opposing views to the RSA or the Rule.

CFE hereby certifies that the RSA and the Rule comply with the Act and the regulations thereunder.

The RSA is attached hereto as Exhibit A. Schedule A to the RSA and Schedule B to the RSA have been separately submitted to Commission staff on April 6, 2006 pursuant to a FOIA confidential treatment request and are redacted from the attached copy of the RSA.

The text of the Rule is set forth below:

\*\*\*\*\*

**Rule 216. Regulatory Services Agreement with NFA.**

The Exchange has contracted with NFA to provide certain regulatory services to the Exchange pursuant to a Regulatory Services Agreement. In accordance that Agreement, NFA may perform certain surveillance, investigative, and regulatory functions under the Rules of the Exchange and the Exchange may provide information to NFA in connection with the performance by NFA of those functions.

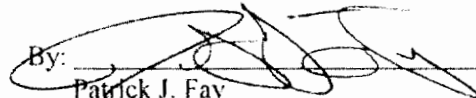
\*\*\*\*\*

CFE-2006-06-001  
10/10/06 9:00 AM  
CONFIDENTIAL

Ms. Jean A. Webb  
Page 2 of 2

Questions regarding this submission may be directed to Arthur Reinstein at (312) 786-7570. Please reference our submission number CFE-2006-06 in any related correspondence.

CBOE Futures Exchange, LLC

By:   
Patrick J. Fay  
Managing Director

cc: Riva Adriance  
Mark Baumgardner (OCC)  
Edward Dasso (NFA)

## REGULATORY SERVICES AGREEMENT

This Regulatory Services Agreement ("Agreement") is dated as of December 27, 2005 (the "Effective Date"), by and between CBOE Futures Exchange, LLC ("CFE"), a Delaware Limited Liability Company, and National Futures Association ("NFA"), a Delaware not-for-profit Corporation.

### RECITALS

**WHEREAS**, NFA is a self-regulatory organization for the commodity futures industry and provides regulatory services in connection therewith; and

**WHEREAS**, NFA desires to provide certain regulatory services to CFE and CFE desires to have NFA provide it with such regulatory services.

**NOW, THEREFORE**, in consideration of the recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Services.** During the term of this Agreement, NFA shall provide to CFE only the regulatory services having the specifications described in Schedule A "Scope of Regulatory Services" ("Regulatory Services"), attached hereto, provided that CFE supplies NFA with all necessary data in a form acceptable to NFA to perform those services. The Regulatory Services shall be rendered by NFA with proper, sufficient and reasonable care and will be in accordance with: (i) CFE's rules, interpretations and policies, and circulars and instruments corresponding to any of the foregoing, in each case as amended from time to time by CFE; (ii) the Commodity Exchange Act, as amended, and the rules and regulations thereunder, each as in effect from time to time, and any and all other requirements from time to time of the Commodity Futures Trading Commission ("CFTC"); (iii) to the extent applicable with respect to security futures on

exchange-traded funds and narrow-based indexes, the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, each as in effect from time to time, and any and all other applicable requirements from time to time of the Securities and Exchange Commission ("SEC"); and (iv) directions arising from consultations between CFE and NFA. Unless specifically provided for in this Agreement that NFA shall provide a particular Regulatory Service, CFE shall provide all services and resources necessary to meet its regulatory requirements. Any changes or amendments to the Regulatory Services for which CFE shall incur fees pursuant to Schedule B shall be agreed upon as set forth in Section 16(g).

2. **Term**. This Agreement shall commence upon the Effective Date and, unless sooner terminated in accordance with the terms set forth in Section 9 or Section 13, shall terminate thirty-six (36) months after the date that NFA begins providing Regulatory Services for CFE. This Agreement shall automatically renew for one-year terms unless either NFA or CFE notifies the other in writing at least four months prior to the expiration of the initial term or any renewal term of its decision not to renew.

NFA and CFE acknowledge and agree that, after the Effective Date, the parties will be engaged in pre-launch development work with respect to the Regulatory Services. The purpose of this development work is to ensure that NFA's market surveillance and trade practice monitoring system is properly tested and evaluated for conformity with CFE's business requirements. The parties agree to cooperate and use reasonable efforts to perform the tasks

necessary to accomplish the development work within seventy-five (75) days after the Effective Date or, if applicable, an earlier date agreed to by the parties.

3. **Payment of Regulatory Services Fees.** CFE will pay for the Regulatory Services in accordance with the provisions of Schedule B "Fee Schedule for Regulatory Services," attached hereto. The charges set forth in Schedule B shall cover all of the obligations of NFA hereunder, and NFA shall not be entitled to any compensation from CFE for performing its obligations hereunder other than as set forth in Schedule B, as otherwise set forth in this Agreement or as otherwise agreed upon as set forth in Section 16(g). Any changes or amendments to Schedule B shall be agreed upon as set forth in Section 16(g).

NFA shall invoice CFE on a monthly basis or as otherwise provided in Schedule B, and CFE will cause each invoice to be paid within thirty (30) days of the date of receipt of the invoice by CFE or as otherwise provided in Schedule B. All invoices shall be in writing. In the event that this Agreement is terminated pursuant to Section 9 or Section 13, CFE agrees to pay NFA for all Regulatory Services performed through the termination date as set forth in Section 9 or Section 13 or the date of cessation of services as set forth in Section 10, as the case may be.

4. **Third Party Software and Equipment Fees.** NFA will pay to the appropriate software and equipment manufacturers, suppliers and distributors all license fees, royalties, use charges or other payments associated with the technology utilized in NFA's development of a market surveillance and trade practice system.
5. **Quality Assurance.**

- (a) NFA shall promptly report to CFE (i) all material malfunctions in or the cessation of NFA's market surveillance and trade practice system discovered by NFA; (ii) any knowledge of circumstances that could reasonably result in a material malfunction or lead to a delay in the performance of the market surveillance and trade practice services; and (iii) NFA's proposed solution to (i) and (ii), if any.
  - (b) CFE shall promptly report to NFA (i) all material malfunctions in CFE's trading system discovered by CFE; (ii) any knowledge of circumstances that could reasonably result in a material malfunction or lead to a delay of the trading system; and (iii) CFE's proposed solution to (i) and (ii), if any.
6. **Disaster Recovery.** NFA shall maintain off-site disaster recovery capabilities that will permit NFA to recover from a disaster and continue providing services to CFE within a commercially reasonable time. NFA shall test the operation and effectiveness of its disaster recovery plan at least annually, which shall include CFE data and services as part of such test. NFA shall also maintain a backup power supply system designed to provide an uninterrupted supply of electrical power, in the event of temporary electrical outages, to the equipment utilized by NFA to perform the Regulatory Services.
7. **Technical Cooperation.** The parties acknowledge that, even after the development work, each party may have to incorporate new equipment into or modify their respective technology system(s) that will require testing from time to time. In implementing and testing new equipment or modifications, both parties acknowledge that they may require the technical assistance and cooperation of the other, and both parties agree to provide such assistance and cooperation.

8. **Proprietary Protection.** As between CFE and NFA, NFA shall have sole and exclusive ownership of all right, title and interest in and to the technology, systems and equipment purchased or created by it and utilized to perform the Regulatory Services. NFA agrees that the trading data provided to NFA by CFE shall be and remain the property of CFE. CFE shall have joint ownership with NFA of all reports and other materials created by NFA related to CFE regulatory matters and CFE's regulatory functions, and NFA hereby assigns to CFE joint right, title and interest in and to those reports and other materials.

9. **Termination Rights.**

(a) **Default.** (i) Except for non-payment of fees, either party may terminate this Agreement (subject to exhaustion of the dispute resolution procedures set forth in Section 15) upon written notice to the other party if the other party materially breaches this Agreement and fails to cure the breach within ten (10) days following receipt of written notice from the first party describing the breach. (ii) In the event that NFA does not receive payment of any invoice, or notice that CFE disputes any amount under the invoice in accordance with the provisions of Section 15, within thirty (30) days after the date that payment under the invoice is due: NFA may terminate this Agreement upon written notice to CFE if CFE fails to make payment of the full amount overdue, or to dispute in good faith the amount due in accordance with the provisions of Section 15, within fifteen (15) days following receipt of written notice from NFA stating that this Agreement is subject to termination if CFE fails to take one of the foregoing actions within fifteen (15) days of receipt of the notice by CFE.

(b) **Bankruptcy**. This Agreement may be terminated immediately by either party by written notice to the other party upon the occurrence of any of the following events affecting the other party:

- (i) The other party admits its inability to pay its debts generally as they become due, or makes an assignment for the benefit of its creditors;
- (ii) Proceedings in bankruptcy or for the reorganization of the other party or for the readjustment of its debts, under the United States Bankruptcy Code, or any other state or federal law, for the relief of debtors, now or hereafter existing, are commenced by the other party, or are commenced against such party and are not discharged within sixty (60) days of their commencement; or
- (iii) A receiver or trustee is appointed for the other party or for any substantial part of its assets, or any proceedings are instituted for the dissolution or the full or partial liquidation of such party, and such receiver or trustee is not discharged within sixty days of his or her appointment, or such proceedings are not discharged within sixty (60) days of their commencement.

(c) **Convenience**. This Agreement may be terminated by either party upon written notification of termination given at least three (3) months before the effective termination date.

10. **Limited Right to Continuance of Services**. Unless otherwise specified, upon the effective termination or expiration date of this Agreement, if CFE is unable to engage another entity able to provide services to CFE comparable to the



Regulatory Services, CFE shall have the right to continue receiving the

Regulatory Services as follows:

- (a) In the event that this Agreement is terminated as a result of a material default of this Agreement by CFE pursuant to Section 9(a)(i), by CFE pursuant to Section 9(c), by NFA pursuant to Section 13, or if CFE elects not to renew this Agreement pursuant to Section 2, CFE shall have the right to continue receiving the Regulatory Services from NFA after the expiration or effective termination date, as the case may be, at the fees set forth in Schedule B except that the monthly service fee shall be an amount equal to 150% of the monthly fee in effect as of the termination date.
- (b) In the event that this Agreement is terminated as a result of a material default of this Agreement by NFA pursuant to the provisions of Section 9(a)(i), by NFA pursuant to Section 9(c), by CFE pursuant to Section 9(b), or if NFA elects not to renew this Agreement pursuant to Section 2, CFE shall have the right to continue receiving the Regulatory Services from NFA after the expiration date or effective termination date, as the case may be, at the fees set forth in Schedule B.
- (c) In the event that this Agreement is terminated by NFA pursuant to Section 9(a)(ii) for nonpayment of fees or by NFA pursuant to Section 9(b), CFE shall have the right to continue receiving the Regulatory Services from NFA after the effective termination date at an amount equal to 150% of the monthly fee in effect as of the termination date, but only if CFE pays NFA

the overdue amount and pays NFA monthly in advance thereafter for the provision of those Regulatory Services.

CFE may continue to receive the Regulatory Services pursuant to the provisions of this Section for a period not to exceed four (4) months. In the event that CFE elects to continue receiving Regulatory Services in accordance with this Section, then CFE shall give at least forty-five (45) days written notice to NFA of the date for the cessation of the Regulatory Services.

11. **Termination Assistance.** Upon the termination of this Agreement for any reason:
- (a) In order to assist CFE in terminating applicable services and transitioning those services to another entity, NFA shall provide to CFE the following services (the "Transition Services"):
    - (i) NFA and CFE shall prepare in collaboration with each other a transition plan setting forth the respective tasks to be accomplished by each party in connection with the orderly transition and a schedule pursuant to which the tasks are to be completed; and
    - (ii) NFA shall provide CFE upon request with all data maintained in NFA's databases necessary to transfer responsibility for providing Regulatory Services to another entity as of the date for which services are no longer rendered by NFA and all of CFE's hard-copy records maintained by NFA on CFE's behalf. Such data shall be on magnetic tape or such other medium acceptable to CFE and NFA.
  - (b) CFE shall pay or reimburse NFA for all costs ("Transition Costs") reasonably incurred by NFA that are directly attributable to providing these

Transition Services. Transition Costs shall be billed to CFE at cost and shall not include a profit margin for NFA. CFE and NFA shall act in good faith and use reasonable business efforts to minimize and mitigate any Transition Costs. (i) If this Agreement is terminated pursuant to Section 2, Section 9(a)(i), Section 9(c), or Section 13 or by CFE pursuant to Section 9(b), NFA shall invoice CFE in arrears for Transition Costs and CFE shall remit payment in full within thirty (30) days of the date of receipt of the invoice by CFE. (ii) If this Agreement is terminated as a result of a material default by CFE pursuant to Section 9(a)(ii) or by NFA pursuant to Section 9(b), prior to providing these Transition Services, NFA shall invoice CFE for Transition Costs that NFA reasonably expects to incur and CFE shall remit payment in full. If CFE fails to remit payment in full within thirty (30) days of the date of receipt of the invoice by CFE, NFA shall not be obligated to provide any Transition Services, except that NFA shall return to CFE all of CFE's data maintained in NFA's databases and all of CFE's hard-copy records maintained by NFA on CFE's behalf. Such data shall be on a medium and in a format that NFA shall determine in its sole discretion.

12. **Confidentiality.**

- (a) CFE and NFA each acknowledges that it will receive in connection with this Agreement confidential or proprietary information of the other party. With respect to CFE, this information may include, among other things, the trading data provided to NFA by CFE and information relating to CFE's current and proposed business plans, technology, Trading Privilege

Holders ("TPHs"), and regulatory activities. With respect to NFA, this information may include, among other things, the type of technology utilized for NFA's market surveillance and trade practice system and the details of the methodology of such surveillance. All such confidential or proprietary information of either party is collectively referred to in this Agreement as "Proprietary Business Information."

- (b) Both parties agree that when disclosing Proprietary Business Information to the other each will, to the extent practicable, identify information considered Proprietary Business Information. To the extent practicable, written disclosures of Proprietary Business Information shall bear reasonable legends to that effect. Each party agrees to take reasonable steps to maintain the confidentiality of the Proprietary Business Information of the other party, and each party agrees to use such information only in connection with the performance of its obligations and the exercise of its rights under this Agreement and for appropriate regulatory and surveillance purposes. Each party agrees that, except as expressly authorized by the disclosing party, the receiving party shall not disclose Proprietary Business Information of the disclosing party to any person, except the receiving party's representatives (directors, officers, employees, committee members, agents or advisors, including without limitation, attorneys, accountants and consultants) who need to know such information for the foregoing purposes.
- (c) In no event shall the provisions of this Section 12 apply to any information that: (i) was rightfully known to the receiving party prior to its receipt from

the disclosing party in connection with this Agreement, or becomes rightfully known to the receiving party other than in connection with this Agreement; (ii) is or becomes public knowledge through no fault of the receiving party; (iii) is disclosed to the receiving party by a third party; (iv) is independently developed by the receiving party without use of any confidential or proprietary information of the disclosing party; (v) is disclosed in accordance with CFE's regulatory processes; or (vi) is disclosed with the approval of the disclosing party. Notwithstanding anything in Section 12(b) to the contrary, each party may disclose any Proprietary Business Information received by it to the extent that it is required by subpoena or other order of court, law or other regulation, or required or requested by any governmental or regulatory authority having jurisdiction, to furnish such Proprietary Business Information; provided that, in any such case, the receiving Party shall provide the disclosing party with prompt notice thereof prior to making any such disclosure so that the disclosing party may seek an appropriate protective order or confidential treatment. In the absence of a protective order or confidential treatment, if the receiving party is nonetheless, in the opinion of its counsel, compelled to furnish Proprietary Business Information to any third party or else stand liable for contempt or suffer other censure or penalty, the receiving party may furnish such information without liability under this Section 12 or otherwise.

13. **Force Majeure**. Each party shall be excused from performance under this Agreement and shall have no liability to the other for any period it is prevented

from performing any of its obligations as a result of delays caused by the other party or by an act of God, war, civil disturbance, court order or other cause beyond its reasonable control, including failures or fluctuations in electrical or mechanical equipment, communication lines, heat, light or telecommunications ("Force Majeure Event"). The affected party shall give the other party prompt written notice of any Force Majeure Event and include in the notice a description of the Force Majeure Event, its effect on the ability of the affected party to perform its obligations under this Agreement, and the actions the affected party plans to take to mitigate the effect of the Force Majeure Event. If the affected party is unable to comply with its obligations under this Agreement due to a Force Majeure Event not caused by the other party for a period of more than thirty (30) days, the other party may terminate this Agreement upon written notice to the affected party. CFE shall not incur payment obligations hereunder to NFA with respect to any time periods in which NFA is unable to perform its obligations hereunder due to a Force Majeure Event that is not caused by CFE.

14. **Liability; Indemnification.**

- (a) **NFA.** NFA's officers, directors, employees and agents shall have no responsibility or liability, contingent or otherwise, for any injury or damages arising in connection with the Regulatory Services provided by NFA to CFE under this Agreement. Notwithstanding the foregoing, NFA shall indemnify, defend and hold harmless CFE and its officers, directors, employees, agents, successors and assignees, in accordance with the procedures described in Section 14(c), from any and all losses, liabilities, damages and claims, and all related costs and expenses (including

reasonable attorney fees), arising from the reckless, wanton, malicious or intentional tortious acts or omissions or gross negligence on the part of NFA or its officers, directors, employees and/or agents.

- (b) **CFE**. CFE's officers, directors, employees and agents shall have no responsibility or liability, contingent or otherwise, for any injury or damages arising in connection with the performance of its obligations under this Agreement and its operation as a contract market. Notwithstanding the foregoing, CFE shall indemnify, defend and hold harmless NFA and its officers, directors, employees, agents, successors and assignees, in accordance with the procedures described in Section 14(c), from any and all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable attorney fees), arising from the reckless, wanton, malicious or intentional tortious acts or omissions or gross negligence on the part of CFE or its officers, directors, employees and/or agents.
- (c) **Procedure**. If any third party shall notify a party hereto (the "Indemnified Party") with respect to any matter which may give rise to a claim for indemnification against any other party (the "Indemnifying Party"), then the Indemnified Party shall notify the Indemnifying Party promptly; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any liability or obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is damaged. In the event any Indemnifying Party notifies the Indemnified Party that it is assuming the defense thereof,

- (i) the Indemnifying Party will defend the Indemnified Party against the matter with counsel of its choice reasonably satisfactory to the Indemnified Party;
- (ii) the Indemnified Party may retain separate co-counsel at its sole cost and expense (except that the Indemnifying Party will be responsible for the fees and expenses of the separate co-counsel to the extent the Indemnified Party concludes reasonably that (1) the counsel the Indemnifying Party has selected has a conflict of interest or (2) there is an actual or potential conflict of interest between the Indemnified Party and the Indemnifying Party with respect to the matter such that counsel selected by the Indemnifying Party cannot represent both the Indemnified Party and the Indemnifying Party without waivers of such conflict);
- (iii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the matter without the written consent of the Indemnifying Party, which consent will not be withheld or delayed unreasonably, and;
- (iv) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the matter without the written consent of the Indemnified Party, which consent will not be withheld or delayed unreasonably, unless the resolution (a) is limited solely to monetary damages, (b) includes an unconditional release of the Indemnified Party from all liability arising out of the matter, and (c) does not include any statement as to, or any



admission of, fault, culpability or failure to act by or on behalf of the Indemnified Party.

(d) **Liability Limits; Consequential and Punitive Damages.**

(i) **NFA.** With respect to any and all actions brought by CFE against NFA, whether in contract, tort or otherwise, NFA's aggregate liability hereunder to CFE for damages for breach of this Agreement by NFA shall be expressly limited to direct damages in an amount not to exceed \$500,000. This limitation shall apply in the aggregate to all claims occurring during the initial term or any renewal term, where the term "claim" means all claims arising out of each accident, happening, or event, (whether damages were foreseeable or not, whether the conduct was intended or not, and regardless of the number of days involved), which causes damage to CFE.

(ii) **CFE.** With respect to any and all actions brought by NFA against CFE, whether in contract, tort or otherwise, CFE's aggregate liability hereunder to NFA for damages for breach of this Agreement by CFE shall be expressly limited to direct damages in an amount not to exceed \$500,000. This limitation shall apply in the aggregate to all claims occurring during the initial term or any renewal term, where the term "claim" means all claims arising out of each accident, happening, or event, (whether damages were foreseeable or not, whether the conduct was intended or not, and regardless of the number of days involved), which causes damage to NFA.

(iii) **Consequential/Punitive**. Neither CFE nor NFA shall be liable for, nor will the measure of damages include, any indirect, incidental, punitive, special, or consequential damages or amounts for loss of income or profits, even if such damages were foreseeable.

15. **Dispute Resolution**. Any dispute between the Parties, either with respect to the interpretation of any provision of this Agreement or with respect to the performance hereunder by NFA or CFE, shall be submitted for resolution as provided in this Section. Prior to the initiation of a suit, action or proceeding in court, the Parties shall first attempt to resolve their dispute, as follows:

(a) If the dispute is over payment, except as otherwise provided in this Agreement, NFA may not terminate this Agreement, suspend or refuse to provide the Regulatory Services due to CFE's failure to pay NFA any amount that is reasonably disputed by CFE in good faith so long as (1) CFE promptly notifies NFA of any disputed amount being withheld from NFA no later than the deadline for doing so as set forth in Section 9(a)(ii) and specifies the reasons why that amount is disputed; (2) all such amounts so withheld are, within ten (10) business days after CFE's notice to NFA, deposited into an Escrow Account (as hereinafter defined); and (3) all amounts not disputed are paid as due and in accordance with the terms of this Agreement. For purposes hereof, an "Escrow Account" shall be an interest-bearing account established by CFE in the name of CFE at a major national bank selected by CFE and reasonably acceptable to NFA. The funds deposited in the Escrow Account shall remain the property of CFE subject to the disbursement requirements provided

herein. CFE shall pay all costs associated with the Escrow Account. The Escrow Account shall be established pursuant to an escrow agreement that provides that the funds therein, including accrued interest, shall be disbursed to NFA or CFE, as applicable, only in accordance with the mutual agreement of NFA and CFE or an arbitration or judicial decision binding on both parties. After resolution of any dispute with respect to the funds placed in the Escrow Account pursuant to the mutual agreement of NFA and CFE or an arbitration or judicial decision binding on NFA and CFE, and after payment from the Escrow Account of all amounts due to NFA with respect to that dispute, including accrued interest as agreed on by the parties or awarded in an arbitration or judicial decision, any remaining portion of the funds that were placed in the Escrow Account with respect to that dispute, including undisbursed accrued interest thereon, shall be promptly paid to CFE. If the funds that were placed in the Escrow Account with respect to the dispute are not sufficient to satisfy any arbitration or judicial award or mutually agreed amount due to NFA with respect to that dispute, then CFE shall promptly pay to NFA the balance due, including accrued interest thereon as agreed on by the parties or awarded by such arbitration or judicial tribunal.

- (b) Every effort should be made to resolve all disputes at the lowest possible level of authority. If the parties fail to agree through normal channels and procedures, then the parties shall attempt to resolve any disputes arising hereunder in the following manner.

- (i) Upon the written request of a party, the other party within five (5) business days will designate an authorized representative who does not devote substantially all of his or her time to performance under this Agreement, whose task it will be to meet for the purpose of endeavoring to resolve such dispute.
- (ii) The designated representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue that the Parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (iii) The specific format for the discussions will be left to the discretion of the designated representatives, but may include the preparation of agreed-upon statements of fact or written statements of position. The Parties agree that any such written statements will be prepared in connection with settlement negotiations, and as such will be privileged and shall not be used against the party who prepared such statement unless it is subsequently introduced by the preparing party in the formal proceedings.
- (iv) If the amount in controversy exceeds \$50,000 and should the designated representatives fail to reach agreement within thirty (30) days of the initiation of the dispute resolution process (or such longer period as such representatives may agree in writing), then

the President or the President's designee (however designated) of each party shall attempt to resolve the issue within fifteen (15) days following such failure.

- (c) A formal proceeding for the resolution of a dispute may be commenced after the earlier of:
  - (i) the designated representative concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or
  - (ii) thirty (30) days after the initial request to negotiate the dispute, or if Section 15(b)(iv) applies, twenty (20) days after the matter has been referred to the President or designee (however designated) of each party.
- (d) This Section will not be construed to prevent a party from instituting, and each party is authorized to institute, a formal proceeding at any time:
  - (i) to avoid the expiration of any applicable limitations period;
  - (ii) to preserve a superior position with respect to other creditors;
  - (iii) to obtain a temporary restraining order, injunction, or other relief in the case of any alleged violation of Section 12; or
  - (iv) to assert a claim for indemnification pursuant to Section 14 in the event that a third party claim covered by Section 14 is asserted.
- (e) Except where clearly prevented by the matter subject to a dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being considered pursuant to the dispute resolution procedures set forth in this Section.

- (f) Nothing contained in this Section 15 shall be deemed to prevent, hinder or delay the exercise of any right of any party to terminate this Agreement for convenience as provided elsewhere in this Agreement.

16. **Miscellaneous.**

- (a) **Headings.** The Section headings herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- (b) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no party hereto will assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other party hereto, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, NFA and CFE may assign its rights or delegate its obligations under this Agreement without the prior express written consent of the other as follows:
  - (i) if an entity that is a party to a Regulatory Services Agreement with NFA succeeds to CFE's business existing at that time as a designated contract market ("Successor Entity"), including any successor by merger or other business combination, CFE may assign its rights and delegate its responsibilities under this Agreement to the Successor Entity regardless of whether CFE continues to exist and regardless of whether the Successor Entity controls, is controlled by or is under common control with CFE;

(ii) NFA may assign its rights and delegate its responsibilities under this Agreement to an entity that controls, is controlled by or is under common control with NFA.

Additionally, NFA may not subcontract any of the Regulatory Services without the prior express written consent of CFE, which shall not be unreasonably withheld or delayed.

- (c) **Waiver**. Except as expressly provided herein, neither party shall, by mere lapse of time, without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any of the provisions of this Agreement.
- (d) **Governing Law**. The laws of the State of Illinois shall govern the validity, interpretation and enforcement of this Agreement, as it applies to a contract executed, delivered and performed solely in such state. Any and all court proceedings arising from or relating in any manner to any dispute between NFA and CFE arising out of, relating to or referencing this Agreement or its breach in any way, shall be brought in, and only in, a United States federal or Illinois state court sitting in Chicago, Illinois. Each party hereby consents to the exercise of jurisdiction by such courts and irrevocably waives any objection that such party may now or later have based on venue or forum non conveniens with respect to any action initiated in such courts.
- (e) **Notices**. All notices, invoices or other communications required or permitted by this Agreement shall be sufficiently given for all purposes hereunder if given in writing and (i) delivered personally, (ii) deposited in

the United States mail, postage prepaid and return receipt requested, (iii) delivered by a recognized document overnight delivery service or (iv) sent by telecopy, facsimile, electronic mail or other electronic transmission service. All notices, invoices or other communications delivered in accordance with this Section shall be sent to the appropriate address or number, as set forth below, or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed given upon personal delivery, three (3) business days after deposit in the United States mail, one (1) business day after deposit with an overnight delivery service or when confirmation of receipt is obtained if sent by telecopy, facsimile, electronic mail or other electronic transmission service, as applicable.

NFA Contact for Notices  
Regarding Regulatory Matters

National Futures Association  
Attention: Edward Dasso  
200 W. Madison Street  
Chicago, IL 60606  
Fax No: (312) 781-1520  
E-mail: edasso@nfa.futures.org

CFE Contact for Notices  
Regarding Regulatory Matters

CBOE Futures Exchange, LLC  
Attention: Steven Slawinski  
400 South LaSalle Street  
Chicago, IL 60605  
Fax No.: (312) 786-7982  
E-mail: slawinss@cboe.com

NFA Contact for Notices  
Regarding Contract Matters

National Futures Association  
Attention: Karen Wuertz  
200 W. Madison Street  
Chicago, IL 60606  
Fax No: (312) 781-1535  
E-mail: kwuertz@nfa.futures.org

CFE Contact for Notices  
Regarding Contract Matters

CBOE Futures Exchange, LLC  
Attention: Patrick Fay  
400 South LaSalle Street  
Chicago, IL 60605  
Fax No.: (312) 786-7575  
E-mail: fayp@cboe.com



CFE has agreed that certain material events will trigger notification to NFA. These events are specified on Schedule C "Material Event Notification," attached hereto.

- (f) **Severability**. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.
- (g) **Amendments**. This Agreement may not be modified or amended except by an instrument or instruments in writing. Any amendment must refer to the provisions of this Agreement so affected and be executed by an authorized representative of both NFA and CFE, and no other act, document, usage or custom shall be deemed to amend this Agreement.
- (h) **Schedules; Entire Agreement**. The Schedules to this Agreement are hereby incorporated by reference and made a part hereof. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and there are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior negotiations, agreements and undertakings between the parties with respect to such subject matter, including but not limited to confidentiality or non-disclosure agreements.

- (i) **No Third Party Beneficiaries.** This Agreement is not intended to and shall not be construed to give any person or entity, other than the parties hereto, any interest, rights, or remedies (including, without limitation, any third party beneficiary rights) with respect to or in connection with this Agreement or any agreements or provisions contemplated hereby.
- (j) **Relationship of Parties.** NFA, in furnishing services to CFE under this Agreement, is acting only as an independent contractor. Except as expressly provided in this Agreement, NFA does not undertake by this Agreement or otherwise to perform any obligations of CFE, whether regulatory or contractual, or to assume any responsibility for CFE's business or operations.
- (k) **Publicity; Trade Reference.** Before using CFE's name as a trade reference or for publicity, marketing, or advertising, NFA shall obtain CFE's prior written consent, which shall not be unreasonably withheld or delayed. Likewise, prior to CFE using NFA's name as a trade reference or for publicity, marketing, or advertising, CFE shall obtain NFA's prior written consent, which shall not be unreasonably withheld or delayed.
- Notwithstanding the foregoing, either party may publicly identify NFA as a regulatory service provider to CFE without the prior written consent of the other party. Additionally, a party may publicly disseminate, and is not required to resubmit to the other party for review and approval, any materials that are substantially similar to materials previously approved by the other party.

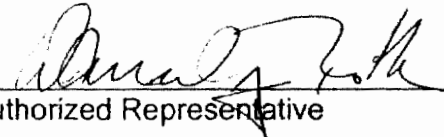
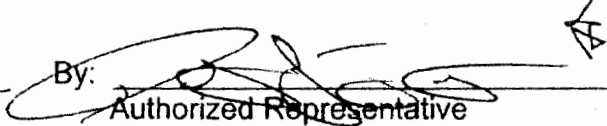
- (l) **Attorneys' Fees**. If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable and documented attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
- (m) **Authority**. NFA represents and warrants to CFE that NFA has the right to enter into this Agreement and to provide the Regulatory Services and perform its obligations hereunder during the term of this Agreement. CFE represents and warrants to NFA that CFE has the right to enter into this Agreement and to perform its obligations hereunder during the term of this Agreement.
- (n) **Survival**. Following any expiration or termination of this Agreement in accordance with its terms and the expiration of the post-termination obligations of the parties pursuant to Section 10 and Section 11, all obligations of each party hereunder shall terminate, except that the provisions of Sections 8, 12, 14, 15 and 16 shall survive and remain in effect following any expiration or termination of this Agreement.
- (o) **Rights and Remedies Cumulative**. All rights and remedies of the parties under this Agreement shall be cumulative and none shall exclude or prejudice any other right or remedy available to the parties under law or by virtue of the provisions of this Agreement.
- (p) **Construction**. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and

no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or law shall be

deemed also to refer to all rules and regulations promulgated thereunder,  
unless the context require otherwise.

IN WITNESS WHEREOF, the parties have caused this Agreement to be  
executed in their names as of the date above written.

NATIONAL FUTURES ASSOCIATION      CBOE FUTURES EXCHANGE, LLC

By:       By:  A  
Authorized Representative      Authorized Representative

Name: Daniel J. Roth

Name: PATRICK J. FAY

Title: President & CEO

Title: MANAGING DIRECTOR

Date: December 27, 2005

Date: DECEMBER 27, 2005

SCHEDULE A AND SCHEDULE B ARE REDACTED

**Schedule C**  
**Material Event Notification**

- A. NFA must be notified **prior** to the effective date of any amendments and/or changes to CFE's Bylaws, Rules or Regulations including, but not limited to: Settlement procedures, Open and Closing Price Determinants, Contract Specifications, Position Limits, Contract Price Calculations, Trading Sessions, and Acceptable Orders.
- B. NFA must be notified **as soon as reasonably possible** of any of the following events:
1. Malfunctions (or interruptions) with/to computer system(s), data feed(s), etc. which may directly or indirectly affect CFE's trading or NFA's surveillance activities. This includes any stoppage or cessation of trading due to circuit breakers or other actions that may be taken by CFE's Board of Directors.
  2. Any market-wide actions taken (such as liquidation only trading).
  3. Interactions with the CFTC regarding CFE operational and regulatory matters, including but not limited to: CFE being a subject of a CFTC complaint, non-routine requests from the CFTC for documents and rule enforcement reviews.
  4. Interactions with the CFTC regarding CFE rule submissions that relate to the Regulatory Services.
  5. Any material change in the organizational structure of CFE, including mergers.
  6. Any disciplinary proceedings or actions taken by CFE against CFE TPHs and/or their principals and employees, or that are reported to CFE by other agencies.
  6. Any TPH whose capital position is below that which is required by CFE.
  7. Any change in CFE's designated personnel responsible for Market Supervision.
  8. Any complaints received by CFE. The promptness of this notification should be based upon the severity of the complaint.
- C. Unless otherwise agreed, CFE agrees to notify NFA as far in advance as possible, but no later than the time parameters set forth below, of any of the following events:

1. One (1) business day in advance of launching a new contract that does not require changes in or modification to CFE's trading system, software programs utilized by CFE's trading system and/or the type and format of data submitted to NFA.
2. Thirty (30) days in advance of launching a new contract with new specifications that requires modest changes in or modification to CFE's trading system, software programs utilized by CFE's trading system and/or the type and format of data submitted to NFA.
3. At least ninety (90) days in advance of any major change in or modification to CFE's trading system, software programs utilized by CFE's trading system and/or the type and format of data submitted to NFA.