January 31, 2020 Nasdaq Futures, Inc.

 FMC Tower, Level 8,

Christopher J. Kirkpatrick 2929 Walnut Street

Office of the Secretariat Philadelphia, PA 19104 / USA

Commodity Futures Trading Commission

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1155 21st Street, NW

Washington, DC 20581

**Rule Self-Certification: Rule Certification to Establish NFX Open Interest Fee**

**Reference File: SR-NFX-2020-03**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Section 40.6 of the Commission’s regulations thereunder, NASDAQ Futures, Inc. (“NFX” or “Exchange”) submits this self-certification to establish an Open Interest Fee. The rule change will take effect on February 14, 2020, for trade date February 15, 2020.

**Transition of OI to EEX Group**

On November 12, 2019, NFX announced that it had sold the core assets of the Exchange to EEX Group. The Exchange is now encouraging market participants to close existing open interest (“OI”) on the Exchange and establish substantially identical positions on the EEX platform, or its subsidiary, Nodal Exchange (“Nodal”). The Exchange has taken multiple steps to ease the transition of its membership and customers to these platforms. The first step in that process was working with member firms and their customers to facilitate the migration of OI in Dry Freight futures and futures options contracts (“Dry Freight”) from NFX to EEX. To that end, on December 12, 2019 and January 15, 2020, the Exchange conducted matching sessions to identify and match offsetting OI in Dry Freight and close those positions on NFX and open substantially similar positions on EEX.

NFX is also working with Nodal to migrate existing OI in U.S. Power, U.S. Natural Gas and Crude Oil futures and futures options (Energy Products) in the coming months. The process will allow all market participants with OI in the Energy Products to close their existing positions on NFX and establish substantially similar positions in Energy Products on Nodal.[[1]](#footnote-1) The Exchange anticipates this process completing by April 1, 2020. In the event that any market participants continue to have OI with NFX after April 1, 2020, the Exchange will assess an Open Interest Charge to those remaining market participants in order to offset the cost of maintaining the platform with little to no business being conducted.

**Elimination of Execution Fees**

Since the November 12, 2019 announcement, NFX has worked with Nodal and market participants to allow for an orderly transition of business away from NFX that is as smooth as possible for our membership and their customers. To that end, the Exchange has eliminated execution fees for transactions in almost all asset classes on the platform.[[2]](#footnote-2) The Exchange took this step in order to provide our market participants the ability to close existing OI on NFX while incurring minimal expense. This process should allow the vast majority of the NFX membership and market participants to exit the market by April 1, 2020.

**OCC Clearing Fee Rebate Program**

 The Exchange has also implemented the Energy Futures Clearing Fee Rebate Program (the “Rebate Program”) that will provide market participants a rebate for all clearing fees assessed by the Options Clearing Corporation (“OCC”) when they close OI in certain futures and options contracts.[[3]](#footnote-3) Under the terms of the Rebate Program, any market participant that closes their entire Energy Products OI prior to April 1, 2020 may apply to the Exchange for a full rebate of OCC clearing fees associated with those closing transactions. The Rebate Program will go into effect on February 3, 2020 and expire on April 1, 2020 (the “Rebate Period”). Any market participant that continues to hold OI after April 1, 2020 will be unable to claim a rebate for any transaction closing OI taking place during the Rebate Period.

**Open Interest Charge**

Beginning April 1, 2020, the Exchange will institute an Open Interest Fee for all market participants that continue to hold OI at the end of each calendar month.[[4]](#footnote-4) The Open Interest Fee applies to all Clearing Futures Participants, Futures Participants and Authorized Customers, as those terms are defined in the NFX rulebook. As outlined above, at the time of the Open Interest Fee’s implementation, the Exchange will have already completed multiple matching sessions to migrate existing OI to EEX or Nodal. The Exchange has waived all execution fees for transactions in Energy Futures, and implemented a Rebate Program to reimburse market participants for any clearing fees incurred when closing OI prior to April 1, 2020. As a result of these actions, the Exchange has taken all reasonable steps to allow market participants to transition their business with minimal to no cost.

For those market participants that choose to remain on the platform after April 1, 2020, the Exchange believes it reasonable to collect an Open Interest Fee in order to defray the cost of maintaining and operating a platform with little to no business being conducted.[[5]](#footnote-5) The Exchange believes the Open Interest Fee complies with the Core Principles and the Act. In particular, the Open Interest Fee complies with Core Principle 2 (Compliance with Rules) and Core Principle 7 (Availability of General Information). The Open Interest Fee complies with §38.151 of the Commission’s Regulations, which requires a DCM to provide its members with impartial access to its markets and services. Here, the Exchange is implementing a fee for all market participants that continue to have OI remaining on the platform. The Exchange anticipates this being a small number of market participants, as most will have taken advantage of the aforementioned opportunities afforded by the Exchange to close their OI.[[6]](#footnote-6)

As detailed in the preamble to the final rule adopting Part 38 in its current form, the Commission noted that a DCM must provide its members, market participants and independent software vendors (“ISVs”) impartial access to its markets and services. Impartial access means 1- access criteria that are impartial, transparent, and applied in a non-discriminatory manner, and 2- fee structures that are comparable for members, market participants, and ISVs, receiving equal access to, or services from, the Exchange.[[7]](#footnote-7)

Here, the Open Interest Fee will apply to all market participants with OI, regardless of their membership category. NFX is implementing the fee as part of a rule change certified pursuant to Part 40 of the Commission’s Regulations well in advance of its intended implementation. By assessing the fee against only those market participants that continue to hold OI, the Exchange is identifying all market participants that are continuing to use the platform, deriving benefits from its continued operation, and charging them accordingly for those benefits. Furthermore, the Open Interest Fee will be identical for all members and market participants holding OI, as the cost incurred by the Exchange is the same regardless of the category of market participant continuing to hold OI on the platform.[[8]](#footnote-8)

Consistent with Core Principle 7 - Availability of General Information, the Exchange will post general information, including the NFX Rulebook as amended herein, on its website: [business.nasdaq.com/futures](http://business.nasdaq.com/nasdaq-futures/nfx-market).

**Certifications**

The Exchange hereby certifies that the rule amendment set forth herein complies with the Act and the Commission’s regulations thereunder. The Exchange also certifies that notice of pending certification and a copy of this submission have been concurrently posted on the Exchange’s website: [business.nasdaq.com/futures](http://business.nasdaq.com/nasdaq-futures/nfx-market). If you require any additional information regarding this submission, please contact Aravind Menon at (301) 978-8416 or aravind.menon@nasdaq.com. Please refer to SR-NFX-2020-03 in any related correspondence.

Regards,



Kevin Kennedy

Chief Executive Officer

Attachment: Nasdaq Futures Fee Schedule

1. Any market participant that is either unwilling, or unable, to move their OI to Nodal has the option to close their OI on NFX and establish positions on another Designated Contract Market. [↑](#footnote-ref-1)
2. See SR-NFX-2019-34, rule certification eliminating execution fees for all transactions, with the exception of Tanker and Dry Freight futures. [↑](#footnote-ref-2)
3. See SR-NFX-2020-02, rule certification implementing the Energy Futures Clearing Fee Rebate Program. [↑](#footnote-ref-3)
4. The Open Interest Fee of $20,000 will be assessed at the end of each month. The Exchange will implement the fee in a graduated fashion with market participants holding OI in April receiving a 75% discount on their initial fee. Market participants holding OI in May and June will receive 50% and 25% discounts, respectively. In July of 2020, and each month thereafter, the Exchange will assess the Open Interest Fee at its full amount of $20,000. Market participants will not be assessed an Open Interest Fee for any month during which all OI is closed. [↑](#footnote-ref-4)
5. The Exchange reserves the right to waive the Open Interest Fee for any market participant making a good faith effort to close their OI by the end of the calendar month. [↑](#footnote-ref-5)
6. The Open Interest Fee has been set at an amount that will, in the Exchange’s best estimation, cover a majority of the costs required to operate the Exchange. In the event the number of market participants continuing to hold OI after April 1st increases, or decreases, the Exchange would consider revising the Open Interest Fee accordingly. [↑](#footnote-ref-6)
7. See 77 FR 36612, 36624. [↑](#footnote-ref-7)
8. See 75 FR 80572, at 80579, noting that fee structures may differ if reasonably related to the cost of providing access or services to a particular category of market participant. In this case, since the cost of providing service to market participants continuing to hold OI is the same regardless of the category of participant, the Exchange will assess identical fees for each category of market participant. [↑](#footnote-ref-8)