



## Rule Self-Certification

February 12, 2015

### VIA ELECTRONIC PORTAL

Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Re: **Regulation §40.6 Submission Certification  
Market Makers  
Reference File: SR-NFX-2015-04**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Section 40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission under the Act, NASDAQ Futures, Inc. (“NFX” or “Exchange”) adopts a new definition of Market Maker in Chapter I, Section 1 of its Rulebook. The Exchange also amends Chapter V, Section 6, entitled “Market Maker Obligations” and renames this Rule “Market Makers.” The Exchange is also making conforming amendments to its Fee Schedule. The amended Rule text will be implemented on March 2, 2015. The amended Rule text is set forth in Exhibit A.

The Exchange is adopting a definition for a Market Maker in Chapter I, Section 1 of the Rulebook. Market Makers may either be a Futures Participant or an Authorized Customer of NFX. Market Makers shall be registered with and approved by the Exchange. The Exchange is also amending Chapter V, Section 6, retitled “Market Makers” to conform the Rule to the definition of a Market Maker. Also, the Fee Schedule is amended to conform to the new Market Maker definition. The Exchange is adding two new paragraphs to Chapter V, Section 6 to provide for Market Maker programs. The Exchange would file such programs separately with the Commission.

With respect to the designated contract market core principles (“Core Principles”) as set forth in the Act:

- *Compliance with Rules:* Today the Exchange has in place Rules which describe the manner in which Futures Participants may access and trade on NFX. Chapter II, Section I provides for the qualifications and rules of participation applicable to Futures Participants as well as Authorized Traders. This Rule states that Futures Participants must utilize the Exchange's services in a responsible manner, comply with Rules, cooperate with Exchange investigations and inquiries and observe high standards of integrity. In addition the Rule provides clear and transparent access criteria and requirements for Futures Participants and Authorized Traders. Chapter V, Section 18 describes prohibited activities with respect to the Trading System. These rules would also apply to Market Makers who are Futures Participants.

Likewise, Chapter V, Section 4, entitled "Direct Access" permits Authorized Customers of any Clearing Futures Participant to access the Trading System provided: (i) the Clearing Futures Participant is a futures commission merchant and the Customer Account is held by the Clearing Futures Participant or a carrying broker maintaining an account for its Customers on an omnibus basis with the Clearing Futures Participant; (ii) the Clearing Futures Participant has completed an application in the form supplied by the Exchange which requests, among other things, information pertaining to the Authorized Customer, a guarantee as to the performance of the Authorized Customer, information concerning Authorized Traders and an agreement executed by the Authorized Customer regarding usage of the Trading System; (iii) the Clearing Futures Participant designates at least two Authorized Risk Officers; and (iv) the Authorized Risk Officer designates pre-trade risk parameters. The Clearing Futures Participant shall remain responsible for the acts and omissions of any of its Authorized Customers, regardless of the level of risk controls set by the Clearing Futures Participant and the approval of such risk controls by the Exchange. The Clearing Futures Participant is responsible for the financial obligations of each Authorized Customer for which it authorizes direct access with respect to all Orders entered and transacted as well as for compliance by the Authorized Customer with the Rules of the Exchange and compliance with Exchange procedures including consenting to its jurisdiction.

Trading is subject to the Rules at Chapter III of the Exchange's Rulebook, which include prohibitions against fraudulent, noncompetitive, unfair and abusive practices. Additionally, trading is subject to the trading procedures and standards in Chapter V of the Rulebook. Trading activity is subject to extensive monitoring and surveillance by NFX's regulatory group in conjunction with the National Futures Association pursuant to the provisions of a

Regulatory Services Agreement. Additionally, the Exchange has the authority to exercise its investigatory and enforcement power where potential rule violations are identified. The Exchange's disciplinary Rules are contained in Chapter VI of the Rulebook, which permit the Exchange to discipline, suspend or expel Futures Participants or market participants that violate the Rules. Pursuant to Chapter V, Section 5, the Exchange may cancel or adjust trades when necessary to mitigate market disrupting events caused by the improper or erroneous use of the Trading System or system defects or malfunctions. The Exchange may review a trade based on its independent analysis of market conditions or upon request from a Futures Participant. These rules would likewise apply to Market Makers.

Market Makers will be provided impartial, transparent and non-discriminatory access to its Trading System. Market Makers are required to comply with the Rules of the Exchange and are subject to the same regulatory monitoring and enforcement of Rules as other Futures Participants.

- *Prevention of Market Disruption:* The Exchange's Regulatory Department, which handles real-time surveillance, monitors trading activity on the Exchange with a SMARTS Surveillance Application through which the Exchange can track activity of specific Authorized Traders, monitor price and volume information and receive alerts regarding market messages. The Exchange's Regulatory Department, which handles real-time surveillance in conjunction with staff that handles T+1 surveillance, utilizes data collected by the SMARTS Surveillance Application to monitor price movements, as well as market conditions and volumes to detect suspicious activity such as manipulation, disruptive trading and other abnormal market activity. The Exchange has established comprehensive audit trail processes that capture trading information to facilitate the surveillance activities described herein. Market Makers that access the Exchange electronically are responsible for maintaining audit trail information for all electronic orders pursuant to Chapter V, Section 1. With respect to direct access, the Clearing Futures Participant authorizing a connection to the Trading System is responsible for maintaining or causing to be maintained the audit trail for all Orders submitted to the Exchange and producing, upon request of the Exchange or its Regulatory Services Provider, the audit trail for all Orders submitted to the Exchange by an Authorized Customer. Each Authorized Customer connecting to the Trading System is responsible for maintaining or causing to be maintained the audit trail for all Orders submitted to the Exchange. A Clearing Futures Participant that has arrangements for a third party to maintain

audit trail information on its behalf shall remain responsible for compliance with this Rule. Also, the Exchange has in place risk controls, including the imposition of trading pauses or halts, to address risks posed by potential market disruptions pursuant to Chapter V, Section 16. The Exchange has the ability to reconstruct all Orders transacted on the Trading System.

- *Execution of Transactions.* The Exchange operates an electronic trading facility that provides Futures Participants with the ability to execute Orders within the Exchange's Order Book and offers within a predetermined automated trade matching and execution algorithm. Orders submitted into the Trading System will continue to be matched in either Price-Time priority or Size Pro-Rata priority order, as specified by the Exchange. The Exchange specifies the types of Orders that will be accepted by the Trading System in recently filed Chapter IV, Section 4. Finally, the Exchange separately describes its Rules for executing transactions outside of the Order Book, such as Block Trades and exchange for related positions (EFRPs), in recently filed Chapter IV, Sections 10 and 11 respectively. The Exchange recently added new Options Rules at Chapter VIII in order that both futures and options on futures may be traded on NFX. These rules would apply to Market Makers.

- *Financial Integrity of Transactions.* The Exchange's Rules provide that all matched trades generated by the Trading System, after the application of pre-trade risk parameters, will be automatically submitted to the Clearing Corporation as described in Chapter V, Section 2. Chapter II, Section 1 of the Exchange's Rules requires that all Futures Participants must be members of the Clearing Corporation either directly or indirectly. Futures commission merchants (FCMs) must maintain an account directly with the Clearing Corporation. Clearing Futures Participants are required to guarantee all trades transacted on NFX on behalf of itself, its Customers and Non-Clearing Futures Participants. Clearing Futures Participants must guarantee and assume financial responsibility for all Exchange Contracts of each Futures Participant guaranteed by it, and will be liable for all trades made by that Futures Participant. The Exchange requires a similar guarantee for Authorized Customers submitting trades into the Trading System via Direct Access pursuant to Chapter V, Section 4. The Exchange's Rules governing minimum financial requirements and protection of Customer funds are set forth in Chapter III.

- *Protection of market participants.* Chapter III of the Exchange's Rulebook contains prohibitions precluding intermediaries from disadvantaging their customers. These rules apply to trading in all Contracts.

There were no opposing views among the Exchange's Board of Directors, members or market participants. The Exchange hereby certifies that the amendments to Chapter I, Section 1, Chapter V, Section 6 and the Fee Schedule comply with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that a notice of pending certification with the Commission and a copy of this submission have been concurrently posted on the Exchange's website.

If you require any additional information regarding the submission, please contact Angela S. Dunn at +1 215 496 5692 or via e-mail at [angela.dunn@nasdaq.com](mailto:angela.dunn@nasdaq.com). Please reference SR-NFX-2015-04 in any related correspondence.

Regards,

A handwritten signature in black ink that reads "Daniel R. Carrigan". The signature is written in a cursive style with a large, prominent "D" and "C".

Daniel R. Carrigan  
President

cc: National Futures Association

## Exhibit A

*New text is underlined; deleted text is stricken.*

### Chapter I Definitions and Governance of the Exchange

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Market Maker. The term “Market Maker” shall refer to any entity approved and registered with the Exchange in such capacity. A Market Maker may be either a Futures Participant or Authorized Customer.

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### Chapter V Trading Procedures and Standards

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#### Section 6 Market Makers ~~Obligations~~

(a) Exchange staff shall approve the implementation of Market Maker programs, pursuant to which Market Makers would be authorized to maintain markets in those products designated by the Exchange. With the exception of allowable privately negotiated transactions executed in accordance with Chapter IV, Sections 10 (Block Trades) and 11 (Exchange For Related Positions), an individual responsible for performing the duties of a market maker pursuant to this Rule may not accept, hold or in any manner have possession or non-public knowledge of Orders for any other person, including knowledge of customer Orders, in the same or a related market. All contract months in the Contract and any related futures or options Contracts shall be considered to be the same or a related market for purposes of this Rule.

(b) To the extent that the terms of any such Market Maker program may be in conflict with any Rules of the Exchange, such terms shall supersede such Rules. Nothing in this Rule shall alter or waive a Future Participant’s or Authorized Customer’s responsibility to comply with provisions of the Commodity Exchange Act or Rules or Regulations of the Commodity Futures Trading Commission unless exempted by the Commission.

~~(a)~~ (c) The Exchange may from time to time approve one or more ~~Future Participants as~~ Market Makers and allocate to such Market Makers such number and types of Contracts, as it may deem necessary or appropriate. Any and all such approvals or allocations may be reviewed, conditioned or terminated at any time in accordance with this Rule.

~~(b)~~ (d) A ~~Future Participant desiring to act as a~~ Market Makers shall file an application with the Exchange in such form as the Exchange may from time to time prescribe. Market Makers shall be selected by the Exchange from among the

applications from time to time on file with the Exchange, based on the Exchange's judgment as to which applicant or applicants is or are most qualified to perform the functions of a Market Maker. Factors to be considered in making such selection may include, but are not limited to, any one or more of the following:

- (i) the adequacy of each applicant's capital;
- (ii) each applicant's operational capacity;
- (iii) the trading experience of, and observance of generally accepted standards of conduct by, each applicant, in particular the individual or individuals who would represent such applicant in its capacity as a Market Maker (each, a "Market Maker Designee");
- (iv) the number and experience of support personnel of each applicant who will be performing functions related to its Market Maker business;
- (v) if applicable, the regulatory history of, and history of adherence to the Rules of the Exchange, rules of other self-regulatory organizations and applicable law by each applicant, in particular its Market Maker Designees;
- (vi) the willingness and ability of each applicant to promote the Exchange as the marketplace of choice;
- (vii) the market performance commitments of each applicant; and
- (viii) if applicable, any performance evaluations conducted pursuant to the Rules of the Exchange or rules of other self-regulatory organizations.

([c]e) In approving any applicant as a Market Maker, the Exchange may place one or more conditions or limitations on the approval, including but not limited to conditions concerning the capital, operations or personnel of such applicant, satisfaction of market performance commitments or benchmarks by such applicant, and the number or types of Contracts which may be allocated to such applicant. Unless earlier terminated pursuant to subsection (d) below, approval to act as a Market Maker shall be for a one year period, after which the ~~Futures Participant~~ Market Maker may once again request approval to be a Market Maker pursuant to this rule for another year. There shall be no limit to the number of one year periods for which a ~~Futures Participant~~ Market Maker may request approval to act as a Market Maker.

([d]f) Each ~~Futures Participant~~ approved as a Market Maker shall retain such status for a period up to one year or until it resigns as a Market Maker and the Exchange relieves such Market Maker of its obligations to act as Market Maker, or the Exchange suspends or terminates such Market Maker's status.

([e]g) In allocating Contracts to Market Makers approved in accordance with the above, the Exchange may: (i) consider any relevant information, including but not

limited to performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness and recommendations of committees of the Board or of the Exchange; (ii) place one or more conditions or limitations of the type specified in paragraph (c) above on the approval; or (iii) allocate any Contract to more than one Market Maker.

([f]h) No Market Maker may sell, transfer or assign any of its rights or obligations as a Market Maker (including but not limited to its allocation of any Contracts by virtue of its status as a Market Maker) without the prior written approval of such sale, transfer or assignment (including but not limited to the approval of the Person to which such rights, obligations or allocation are intended to be sold, transferred or assigned) by the Exchange. Any purported sale, transfer or assignment in violation of the foregoing sentence shall be void from the outset. For purposes of this paragraph (f), the following transactions shall be deemed to constitute a transfer of a Market Maker's rights or obligations:

- (i) Any sale, transfer or assignment of five percent of the equity or profits or losses of a Market Maker (or any series of smaller changes that in the aggregate amount to a change of at least such percentage); provided that any sale, transfer or assignment of an interest of less than such percentage may be found by the Exchange to constitute a transfer of a Market Maker's rights or obligations if the particular facts and circumstances warrant such a determination;
- (ii) Any change in, or transfer of, control of a Market Maker; and
- (iii) Any merger, sale of assets or other business combination or reorganization involving a Market Maker.

([g]i) The Exchange may from time to time evaluate a Market Maker's performance with respect to, among other things, one or more of the following: quality of markets, market share (taking into account all contracts similar to the relevant Contract or Contracts), administrative factors and observance of ethical standards. In this connection, the Exchange may consider any relevant information, including but not limited to market share and trading data, a Market Maker's regulatory history and such other factors and data as may be pertinent under the circumstances.

([h]j) The Exchange may terminate, place conditions upon or otherwise limit a ~~Futures Participant~~ Market Maker prior approval to act as a Market Maker or a Market Maker's allocation of Contracts, under any one or more of the following circumstances:

- (i) if the Exchange finds in connection with an evaluation under paragraph (g) above that such ~~Futures Participant's~~ Market Maker's performance as a Market Maker has been unsatisfactory;
- (ii) if such ~~Futures Participant~~ Market Maker becomes subject to a material financial, operational or personnel change;



- (iii) if such ~~Futures Participant~~ Market Maker fails to comply with any conditions previously placed upon its approval as a Market Maker or its allocation of Contracts or perform its obligations; or
- (iv) if for any reason such ~~Futures Participant~~ Market Maker is no longer eligible for approval as a Market Maker or to be allocated a particular number or type of Contracts.

([i]k) Each applicant for approval as a Market Maker pursuant to the above shall be given an opportunity to present any matter which it wishes the Exchange to consider in conjunction with the application. Prior to taking any remedial action against a Market Maker pursuant to the above, such Market Maker shall be given notice thereof and an opportunity to present any matter which it wishes the Exchange to consider in determining whether to take such action. The Exchange may require that any presentation under this paragraph be made partially or entirely in writing, and may require the submission of additional information from any Person wishing to make a presentation under this paragraph. Formal rules of evidence shall not apply to any proceeding involving such a presentation. Notwithstanding the foregoing, the Exchange shall have the authority to immediately terminate, condition or otherwise limit a ~~Futures Participant~~ approval to act as a Market Maker in accordance with the above, without prior notice or opportunity to make a presentation under this paragraph, if the financial, operational or personnel change in question warrants such action.

([j]l) Market Makers shall have no obligation to submit bids and offers. However, when and if they are submitting bids and offers for which they are approved as a Market Maker, they are required to submit a two-sided market (bid and offer) in all Contracts unless a specific obligation is specified with respect to submitting a bids and offers for a Contract.

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## **NASDAQ FUTURES FEE SCHEDULE PREFACE**

For purposes of assessing fees, the following references should serve as guidance.

The term "**Customer**" applies to any transaction that is identified by a Futures Participant with a Customer Type Indicator ("CTI") code 4.

The term "**Market Maker**" means a Futures Participant, or Authorized Customer approved by the Exchange, ~~to undertake rights and obligations to facilitate an orderly and liquid market, as a Market Maker, and quote continuous two-sided markets for its own account pursuant to Chapter IV, Section 10. The term "Market Maker" applies to any transaction which occurs in an account assigned by the Exchange for the purpose of transacting orders as a Market Maker.~~

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