



April 7, 2017

Via CFTC Portal Submissions

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
3 Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington D.C. 20581

**RE: Self-Certification Rule Amendments: Nadex Adds Ability to Limit  
Trading Privileges - Submission Pursuant to Commission Regulation  
§40.6(a)**

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 (the “Commission”) under the Act (the “Regulations”), North American Derivatives Exchange, Inc., in its capacity as a designated contract market (“Nadex”, the “Exchange”) hereby submits to the Commission its intent to amend its Rule 3.6 (Rejection of Applicant) to provide for the limitation of trading privileges in instances where no Rule violation has occurred that could lead to disciplinary action, but where Nadex has determined the action is necessary or appropriate to minimize risk, or otherwise protect the Exchange, the market, or its Members. The limitations on trading would be imposed for a period of time as determined by the Compliance Department.

As an exchange and clearinghouse, Nadex may bring an enforcement action against a Member when the Member has violated the Exchange Rules, the outcome of which may include sanctions such as suspended trading or membership revocation. The majority of cases for which a formal investigation was initiated by the Compliance Department have pertained primarily to trade practice infractions, membership obligations, disclosure requirements, and/or undisclosed prior regulatory or criminal activity. In the event a formal case results in disciplinary action, the Member has an opportunity to object and request a hearing in accordance with Chapter 9 of the Rulebook. If a Member does not dispute the findings or recommended disciplinary action, or,

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following a hearing requested by the Member a neutral hearing officer finds in favor of the Exchange, a summary of the incident, including the Compliance Department's findings and recommended action, is posted on the Nadex website, and is submitted to the National Futures Association's ("NFA") public database of disciplinary actions.

The investigation, formal case, and appeals methods are an important and effective means to creating a fair and transparent marketplace, minimizing financial risk, and maintaining a Member base that continues to meet the Nadex membership criteria. The public availability of disciplinary actions taken against a Member protect the industry as a whole by providing other institutions with valuable information which can be taken into account to protect their own institution and clients. However, the Nadex Rules cannot set forth all possible instances where certain Member activity may prove detrimental to the business, or present a threat or risk to Nadex staff or its Members. Moreover, not all such activity may present a risk to the industry in general, rather the detrimental activity may be specific to Nadex. Not all activity for which Nadex may deem it necessary or appropriate to restrict a Member's trading privileges may warrant a permanent public posting with the NFA, and the ramifications that accompany such disclosure. Unlike a traditional derivatives exchange that has direct members — Futures Commission Merchants ("FCMs") — that act as intermediaries for retail customers, Nadex caters directly to non-intermediated retail clients, with over 99.9% of its Member base consisting of individuals. In this way, Nadex shares some of the same characteristics as a FCM, or brokerage. Generally speaking, a FCM may restrict account access, or terminate its relationship with a client in its discretion, without client recourse for disputing or reinstating his/her account or trading privileges. The FCM may also refer inappropriate client activity to its Designated Self-Regulatory Organization ("DSRO"). Accordingly, the FCM is able to discern which activity should be reported to a regulatory agency, and that which it can address directly with its client. Presently, Nadex is able to bring regulatory actions against its Members. However, despite the similarities between its retail Members and FCM clients, Nadex does not share the same level of discretion to address its Members' activities that do not rise to the level of a Rule violation by means of trading restriction.

The addition of a Rule granting Nadex the authority to restrict trading privileges in its discretion would not be unique to Nadex. The Cantor Futures Exchange, which like Nadex is a retail exchange and clearinghouse, includes in its Rule III-6 a provision that states "[t]he Cantor Exchange may at any time suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of any Participants or Authorized Traders if, in the sole discretion of the Board of Directors, such action is in the best interests of the Exchange."

Members whose trading privileges have been limited pursuant to this amended Rule 3.6 would be able to submit a written appeal to the CEO, similar to the appeals process available to denied applicants, also set forth in Rule 3.6. Members whose trading privileges have been limited under the amended Rule would not be subject to a formal investigation or disciplinary action, nor would details of the limitation become a matter of public record. Accordingly, the Member will not have the option of requesting a hearing on the matter under Rule 9.2.

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The amendment to Rule 3.6 in no way suggests that Nadex will forgo a proper formal case investigation in favor of a limitation of trading privileges under this Rule where there is reason to believe a Rule violation has occurred, for which disciplinary action may be justified. Additionally, Nadex is not submitting this submission in its capacity as a derivatives clearing organization, or clearinghouse. Individuals whose trading privileges have been limited pursuant to Rule 3.6 will retain the ability to manage the financial and informational aspects of their accounts with the clearinghouse, for example, to make withdrawals or update address information.

### **DCM Core Principles**

Nadex has identified the following Designated Contract Market (“DCM”) Core Principles as potentially being impacted by the amendment discussed herein: Core Principle 2 Compliance with Rules; Core Principle 7 Availability of General Information.

Core Principle 2 (Compliance with Rules), implemented by Commission Regulation 38.151 (Access Requirements) requires the DCM provide impartial access to its markets and services by members, persons with trading privileges, and independent software vendors. This Regulation also notes that “A designated contract market must establish and impartially enforce rules governing denials, suspensions, and revocations of a member’s and a person with trading privileges’ access privileges to the designated contract market, including when such actions are part of a disciplinary or emergency action by the designated contract market.” By making use of the word “including” in this provision, the drafters have indicated that a member’s access may be revoked or suspended for a reason other than as the result of a disciplinary action. Accordingly, the Regulation does not prohibit Nadex from amending its Rules to include the ability to limit trading privileges for a reason other than as the result of a disciplinary action. Nadex will impartially enforce its discretionary decision to limit trading privileges, and as it does for denied applications, will maintain a log of any trade limitations enforced under Rule 3.6 reflecting the circumstances of the limitation. Like denied applications, trading limitations imposed pursuant to Rule 3.6 will be reported to the Regulatory Oversight Committee during its quarterly meetings, providing an additional layer of review to ensure such actions are applied impartially. The logged record of the limitations under Rule 3.6 will enable Nadex staff to easily review precedent, and take similar action under like circumstances. Based on these safeguards, the amendments discussed herein will not negatively impact Nadex’s ability to comply with this Core Principle.

Core Principle 7 (Availability of General Information), implemented by Regulations 38.400 and 38.401 (General Requirements) require the DCM to make public the rules and specifications describing the operation of the DCM, as well as the DCM’s Rulebook, and to ensure the Rulebook is complete and accurate. The Nadex Rulebook is made available on the Nadex website, and will reflect the amendment discussed herein. Accordingly, the amendment will not negatively impact Nadex’s ability to comply with this Core Principle.

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Pursuant to the 10-day filing period under Regulation 40.6(a)(3), Nadex intends to implement the amendments discussed herein on trade date April 25, 2017.

Rule changes have been outlined in Exhibit A. The amendments to the Rulebook are set forth in Exhibit B. Any deletions to the Agreement have been stricken out while the amendments and/or additions are underlined.

No substantive opposing views were expressed to Nadex with respect to these amendments.

Nadex hereby certifies that the amendments and additions contained herein comply with the Act, as amended, and the Commission Regulations adopted thereunder.

Nadex hereby certifies that a copy of these amendments was posted on its website at the time of this filing.

Should you have any questions regarding the above, please do not hesitate to contact me at (312) 884-0927 or by email at [jaime.walsh@nadex.com](mailto:jaime.walsh@nadex.com).

Sincerely,



Jaime Walsh  
Legal Counsel

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**EXHIBIT A**

<b>Rule</b>	<b>Asset</b>	<b>Duration/Close Time</b>	<b>Action</b>	<b>Effective Date</b>
3.6	Rejection of Applicant	N/A	Add trading privileges limitations.	4/25/2017

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# EXHIBIT B

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## Amendment of Rules 3.6

*(The following Rule amendments are underlined and deletions are stricken out)*

RULES 1.1 – 3.5 [UNCHANGED]

### RULE 3.6 REJECTION OF APPLICANT AND LIMITATIONS OF TRADING PRIVILEGES

- (a) Nadex may, in its sole discretion, deny any Member application, or suspend, revoke, limit, condition, restrict, or qualify the trading privileges of any Market participants or their Authorized Trader(s) as it deems necessary or appropriate.
- (b) If trading privileges are limited pursuant to Section (a) of this Rule, Nadex may initiate a transfer of the Member's balance to the bank account on record.
- (c) ~~(a)~~ If Nadex denies the membership application of any Person or limits the trading privileges of any Member pursuant to this section, the applicant or Member may appeal the decision by filing with the CEO of Nadex a petition for review of such membership denial or trading limitation. The petition should describe in detail the reasons why the membership application should be granted or trading limitations removed. The petition must be filed within thirty (30) calendar days from the date upon which the applicant or Member received notice of the denial of membership or limitation of trading privileges. was received by the applicant. The decision of the CEO will be final. A Person that has been denied membership by the CEO will not be eligible for reapplication during the six months immediately following such denial.

RULES 3.7 - 12.78 [UNCHANGED]

*The remainder of this page is intended to be left blank.*

*End of Rulebook.*