



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 Clarifies Jurisdiction and Termination of an Account Opened by a Representative of a Named Member - 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 and derivatives clearing organization (“Nadex”, the “Exchange”) hereby submits to the Commission its intent to clarify that Nadex will retain jurisdiction over anyone who initiates a transaction on the exchange, either directly or through an intermediary, after termination or revocation of the individual’s trading privileges with respect to any transactional or Rule-related matter involving that individual, regardless of whether the matter was discovered prior to or after the revocation or termination.

Nadex is also amending its Rules to clarify that in the event it discovers that an individual other than the named Member and account owner completed the Membership application, Nadex may return any funds in the account and terminate the account. When applying for Membership, the applicant must attest to certain Qualifying Questions, as well as certify that all information provided in the application is true and correct, and that the applicant will be bound by all Nadex Rules. A representative completing the application for the named Member/account owner, may not be privy to all sensitive information in the individual’s background, information that could lead to a “yes” answer to one or more of the Qualifying Questions. Furthermore, if the

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application is completed by another individual, the named Member/account owner, has not himself agreed to the conditions of membership or certified he will be bound by and comply with all Exchange Rules. Nadex Rule 3.1(a)(3)(B) states that in order to be eligible to become a Member, the applicant must certify that he has read, understands, and agrees to comply with the Nadex Rules, Risk Disclosure Statement, Terms of Use, Privacy Policy, and Membership Agreement. If the named Member/account owner did not complete the application, and therefore did not make these certifications, the individual is not eligible for membership and thus is not a legitimate Member.

### **DCM Core Principles**

Nadex has identified the following Designated Contract Market (“DCM”) Core Principles as potentially being impacted by the amendments discussed herein: Core Principle 2 Compliance with Rules; Core Principle 4 Prevention of Market Disruption; Core Principle 7 Availability of General Information.

### **Continuing Jurisdiction**

Section 38.159 under Core Principle 2 requires the DCM to have the ability to obtain information necessary to carry out its responsibilities under the Principle. This Principle also requires the DCM to initiate investigations of possible rule violations. In order to effectively carry out an investigation, Nadex may need to obtain information under the control of a former Member, or market participant. Likewise, Section 38.254 under Core Principle 4 (Prevention of Market Disruption) requires the DCM to have the ability to obtain information. Accordingly, the former Member or participant must have a continuing obligation to cooperate with respect to matters involving the individual that occurred prior to termination, regardless of when the matter was discovered. Therefore, this clarification of Nadex’s Rule on jurisdiction will not negatively impact Nadex’s ability to comply with these Core Principles.

### **Termination Non-Member Application Accounts**

Section 38.151 under Core Principle 2 also states that “Prior to granting any member or market participant access to its markets, a designated contract market must require that the member or market participant consent to its jurisdiction”. In the event a membership application is completed by an individual other than the named Member/account owner indicated on the application, the individual who completed the application is the person who agreed to the jurisdiction, not the named Member/account owner. Therefore, Nadex cannot allow the named Member/account owner to access its markets. Accordingly, this clarification of the Nadex Rules will not negatively impact Nadex’s ability to comply with this Core Principle.

### **All Amendments**

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

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ensure the Rulebook is complete and accurate. The Nadex Rulebook is made available on the Nadex website, and will reflect all amendments discussed herein. Accordingly, the amendments will not negatively impact Nadex's ability to comply with this Core Principle.

### **DCO Core Principles**

Nadex has identified the following Derivatives Clearing Organization ("DCO") Core Principles as potentially being impacted by the amendments discussed herein: Core Principle C (Participant and Product Eligibility) and L (Public Information).

#### **Termination Non-Member Application Accounts**

Core Principle C, implemented by Commission Regulation 39.12 states that a "derivatives clearing organization shall have the ability to enforce compliance with its participation requirements and shall establish procedures for the suspension and orderly removal of clearing members that no longer meet the requirements." Nadex Rule 3.1(a)(3)(B) states that in order to be eligible to become a Member, the applicant must certify that he has read, understands, and agrees to comply with the Nadex Rules, Risk Disclosure Statement, Terms of Use, Privacy Policy, and Membership Agreement. If the named Member/account owner did not complete the application, and therefore did not make these certifications, the individual is not eligible for membership and thus is not a legitimate Member. Nadex is clarifying in its Rules that under these circumstances, it will terminate the account. Therefore, this amendment will not negatively impact Nadex's ability to comply with this Regulation.

#### **All Amendments**

Core Principle L (Public Information), implemented by Commission Regulation 39.21, requires the DCO to make its rulebook available to the general public. As previously stated, the Nadex Rulebook is available on the Nadex website, and will continue to be made available after it is updated with the amendments discussed herein are made. Therefore, the amendments discussed herein will not negatively impact Nadex's ability to comply with this Core Principle.

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.

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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>
2.9	Consent to Jurisdiction	N/A	Clarify that jurisdiction continues beyond termination.	4/25/2017
3.1	Trading Members – Applications, Classifications, and Privileges	N/A	Clarify that accounts not opened by the named Member will be terminated.	4/25/2017

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# EXHIBIT B

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Amendment of Rules 2.9, 3.1, and 3.6

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

RULES 1.1 – 2.9 [UNCHANGED]

RULE 2.9 CONSENT TO JURISDICTION

Any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the Rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes. Exchange jurisdiction over the Person, as well as the Person's agreement to be bound by the Nadex Rules and obligation of cooperation and participation in investigatory and disciplinary processes, shall continue beyond the revocation or termination of the Person's trading privileges with respect to any transactional or Rule-related matter involving the Person, occurring before the revocation or termination of trading privileges, regardless of whether the matter was discovered prior to or after the revocation or termination of the Person's trading privileges.

RULE 3.1 TRADING MEMBERS - APPLICATIONS, CLASSIFICATIONS, AND PRIVILEGES

- (a) To be eligible to become a Trading Member:
- (i) An applicant who is an individual, must:
- 1) provide Nadex with any information or documentation Nadex deems necessary in order to verify the applicant's identity, perform a criminal background check, or otherwise review information provided on an Application for Membership or by a third party provider<sup>1</sup>;
  - 2) have an account or accounts in the Trading Member's name with a US Financial Institution that the Trading Member will use to fund its Nadex account at the Nadex settlement bank, and to receive funds from its Nadex account, or, if the Trading Member is a non-United States resident, have an account or accounts in the Trading Member's name with either a US Financial Institution or a Foreign Bank capable of transacting with Nadex's settlement bank either directly, through a Correspondent Account, or other acceptable intermediary that the Trading Member will use to fund its Nadex

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<sup>1</sup> Required documentation may vary depending on the applicant's residential location. Specific residential locations from which Nadex may accept applications for Membership will be identified on the Nadex Membership application.

account at the Nadex settlement bank, and to receive funds from its Nadex account via one of the acceptable methods as stated on the Nadex website<sup>2</sup>; and

3) certify that

(A) the applicant is old enough to enter into a legally enforceable contract and has reached the required age as stated on the Membership Agreement;

(B) the applicant has read, understands and agrees to comply with the Nadex Rules, Risk Disclosure Statement, Terms of Use, Privacy Policy, and Membership Agreement;

(C) the applicant agrees to be bound by these Rules; and

(D) the applicant will trade only for itself and will not trade as an intermediary for any other person or entity.

(ii) An applicant that is an entity must

(1) be organized in the United States;

(2) provide Nadex with a valid Taxpayer Identification Number;

(3) provide Nadex with a valid Legal entity Identifier as described in Commission Regulation §45.6;

(4) have an account or accounts in the Trading Member's name with a Financial Institution that the Trading Member will use to fund its Nadex account at the Nadex settlement bank, and to receive funds from its Nadex account, via one of the acceptable methods as stated on the Nadex website; and

(5) designate Authorized Trader(s) to trade its account and agree that such Authorized Trader(s) will trade only for it and will not trade for him/herself or as an intermediary for any other entity or person;

(6) designate at least one officer who is responsible for supervising all activities of its employees relating to transactions effected on Nadex or subject to Nadex Rules and provide any information Nadex may request regarding such officer(s);

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<sup>2</sup> All funds deposited into the Trading Member's Nadex account at the Nadex settlement bank shall be in U.S. dollars. All withdrawal payments from the Trading Member's Nadex account will also be made in U.S. dollars.



(7) agree to be bound by these Rules; and

(8) certify that

(A) the applicant is validly organized, in good standing, in the United States;

(B) the applicant is authorized by its governing body and, if relevant, documents of organization, to trade commodities, swaps, futures and options contracts, and

(C) the applicant has read, understands and agrees to comply with the Nadex Rules, Risk Disclosure Statement, Terms of Use, Privacy Policy, and Membership Agreement.

(b) In order to become a Trading Member, an applicant who is an individual must complete and submit the Nadex on-line membership application, provide Nadex with any other information Nadex may request, and fund its Nadex account by transferring to the appropriate segregated Cleared Swap Proprietary Account at Nadex's settlement bank an initial deposit of no less than \$250 in funds from its account at a Financial Institution. Nadex may return any account balance and terminate any account upon the discovery that the Membership Application was completed by anyone other than the named individual identified on the Membership Application. An applicant who is an entity must complete an Account Certification, Membership Agreement, and W-9, which collectively shall constitute the membership application, provide Nadex with any other information Nadex may request, and fund its Nadex account by transferring to the appropriate segregated Cleared Swap Proprietary Account at Nadex's settlement bank an initial deposit of no less than \$250 in funds from its account at a Financial Institution. All funds deposited by Trading Members shall constitute "Member Property" in accordance with CFTC Regulations.

(c) Submission of a membership application to Nadex constitutes the applicant's agreement to be bound by these Rules and other policies of Nadex.

(d) If an application is approved by Nadex and the Nadex settlement bank confirms to Nadex that the applicant has deposited with it the funds required in paragraph (b) of this Rule, the applicant will be a Trading Member of Nadex and will have the following privileges, which Nadex may revoke, amend, or expand in accordance with, or by amending, these Rules:

- (i) to maintain a Nadex account;
- (ii) to buy Contracts on the Market using the funds in its Nadex account;
- (iii) to sell Contracts on the Market using the funds in its Nadex account;
- (iv) to view "real-time" the same best bids to buy and offers to sell the Contracts traded on the Market as are available to all other Members;

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(v) to view the current trading volume and open interest for the Contracts traded on the Market; and

(vi) to view all non-secure parts of the Nadex website, including these Rules, and descriptions of Contracts traded on the Market as well as all secure parts of the Nadex website outlined above in Rule 3.1(d)(i) – (vi).

(e) Nadex may in its sole discretion approve, deny, or condition any Member application as Nadex deems necessary or appropriate.

(f) A Trading Member that is an individual, may not maintain and/or trade more than one Nadex account. The Authorized Trader(s) of a Trading Member that is an entity, may not maintain a separate Nadex account and/or trade any Nadex account other than that entity's account.

RULES 3.2 – 12.78 [UNCHANGED]

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

*End of Rulebook.*