



April 17, 2019

Via CFTC Portal Submissions

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

RE: Rule Certification: Nadex Implements Dormant Account Inactivity Fee and Amends Market Maker Fees – Submission Pursuant to Commission Regulation §40.6(a)

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission (the “Commission”) under the Act, North American Derivatives Exchange, Inc. (“Nadex” or the “Exchange”) hereby submits to the Commission its intent to implement an inactivity fee to discourage its Members from abandoning positive cash balances in a dormant account. Additionally, Nadex is amending its Market Maker fees.

Abandoning an account with a positive balance places a number of burdens and liabilities on the Exchange. An account owner with a dormant account is still a Member of the Exchange and subject to the Exchange Rules. The Compliance Department has an obligation to enforce the Exchange Rules, and in the event the Member – who has effectively left the Exchange – becomes the subject of any criminal or regulatory disciplinary action during the period of dormancy and fails to report the matter to Nadex as required by Rule 3.3(d), Nadex may be required to open a formal case against the Member for failure to comply with the relevant Rule, potentially subjecting the Member to a public posting of the matter on the Nadex website, as well as the National Futures Association website. Nadex believes it is appropriate to require the dormant account holders to be responsible for the costs associated with maintaining their accounts through an inactivity fee which will reduce the time and resources spent maintaining these accounts making it easier for staff to address the needs of Nadex’s active Members and making further enhancements to the Exchange.

For purposes of the inactivity fee, a dormant account is defined as an account that has not engaged in any trading activity for a period of twelve (12) consecutive months. After an account becomes dormant, the account will begin incurring an inactivity fee of \$10.00 on a monthly basis.

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If at any time a dormant account carries a balance less than \$10.00, Nadex will reduce its fee to the amount of the remaining account balance bringing the balance to \$0. No account balance will become negative as a result of the inactivity fee. For example, an account that has had no trading activity for twelve consecutive months and carries a \$3.00 balance will only be charged a \$3.00 inactivity fee for that month. Similarly, an account that has had no trading activity for twelve consecutive months and carries a \$15.00 balance will be charged a \$10.00 inactivity fee after the account's twelfth month of inactivity, but only a \$5.00 inactivity fee for the thirteenth month of inactivity, bringing the balance to \$0. Inactivity fees will not be applied to an account with a \$0 balance. A Member may reactivate a dormant account by engaging in at least one trade. The account will not be charged an inactivity fee until it has again been dormant for twelve months.

Nadex Rule 3.3(f) states “[a] Member is not required to engage in trading activity or maintain a minimum balance in its account after initial funding. If a Member does not engage in any trading activity or maintain a positive balance for a period of one year, however, that Member’s account and membership may be terminated. A Person whose membership is terminated pursuant to this provision may re-apply for membership at any time following such termination.” Nadex plans to terminate dormant accounts periodically when the balance reflects \$0, in accordance with this Rule.

Whether an account is charged an inactivity fee or not is completely under the control of the account owner who can choose to either engage in minimal trading activity to keep the account active, withdraw the balance and close the account, or pay the fee to have Nadex maintain the account during the dormancy period. In addition to posting this submission on its Notices page and the terms of the fee on its Fees page of the Nadex website, Nadex also plans to send multiple emails to its Members beginning in May and continuing through June to provide ample notice of the fee before it is implemented on July 1, 2020. The inactivity fees collected will be considered other income and will be reflected in Nadex’s monthly financial reports provided to the Commission.

Additionally, Nadex is amending the fees it charges its duly appointed Market Makers operating pursuant to a Market Maker Agreement. Nadex Market Makers are currently charged an uncapped \$0.50 per side per trade executed on the Exchange, and likewise, an uncapped \$0.50 per side per contract that settles in-the-money. Nadex has never raised Market Maker execution or settlement fees. Nadex has grown significantly in recent years, and Nadex continues to develop and make improvements to its products, payment methods, and other technology to provide its Members a positive experience. Nadex Market Makers constitute the majority of counterparties to the trades entered on the Exchange, and have a vested interest in Nadex’s technological capabilities and enhancements. Nadex Market Makers have substantial capital requirements and endure a lengthy vetting and onboarding process before receiving Market Maker status. While Market Makers do not agree to provide these services for a specified period of time, they do in essence make a long-term commitment to the Exchange that Direct Trading Members do not. Though all Members benefit from the improvements to the Exchange, Market Maker

perhaps benefit the most by virtue of their longevity. Accordingly, raising Market Maker fees is an appropriate investment in the ongoing quality of the Exchange. Beginning on trade date May 4, 2020, duly appointed Market Makers will be charged an uncapped \$0.70 per side per Binary or Call Spread trade executed on the Exchange, and an uncapped \$0.50 per side per Touch Bracket™ Knock-Out trade executed on the Exchange. Additionally, Market Makers will be charged an uncapped \$0.70 per side per Binary or Call Spread contract that settles in-the-money, and an uncapped \$0.50 per side per Touch Bracket™ Knock-Out contract that settles in-the-money. Changes to the fees have already been discussed with all current Market Makers.

Presently, duly appointed Market Makers incur a Wide Spread Surcharge fee based on their bid/ask spread in the Binary contracts pursuant to Nadex Rule 4.4(e). While Nadex is not permanently removing the Wide Spread Surcharge, it is suspending the fee until further notice. Nadex will post a Notice on its website when it reinstates the Wide Spread Surcharge.

DCM Core Principles

Nadex has identified the following Designated Contract Market (“DCM”) Core Principles as potentially being affected by these amendments: Core Principle 2 (Compliance with Rules), Core Principle 7 (Availability of General Information).

Core Principle 2, implemented by Regulation 38.151, requires a DCM to provide its members with comparable fee structures. The inactivity fee discussed herein will apply uniformly to all Direct Trading Members who leave an account dormant for twelve consecutive months. Changes to the Market Maker fees will be uniformly applied to all Market Makers operating pursuant to a Nadex Market Maker Agreement.

Core Principle 7, implemented by Regulation 38.401, requires a DCM to make available to the public the terms and conditions of the contracts of the contract market, the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market, and the rules and specifications describing the operation of the contract market. Nadex Rule 3.8 (Dues, Fees, and Expenses Payable by Members) will notify Members that dormant accounts may be subject to an inactivity fee as further described on the Nadex website. The Rulebook is publicly available on the Rules page of the Nadex website. The specific terms of the inactivity fee, as well as changes to the Market Maker fees will be set forth in the Fee Schedule. The Fee Schedule is also publicly available on the Nadex website. Accordingly, the implementation of the amendments discussed herein will not have a negative impact on Nadex’s ability to comply with these Core Principles.

DCO Core Principles

Nadex has identified the following Derivatives Clearing Organization (“DCO”) Core Principles as potentially being affected by these amendments: Core Principle L (Public Information).

Core Principle L, implemented by Regulation 39.21, requires a DCO to publicly disclose each clearing and other fee that the DCO charges its clearing members. The Nadex Fee Schedule includes both fees assessed to Direct Trading Members, as well as Market Maker Members. The Fee Schedule is currently available on the Nadex website and will continue to be made available after the amendments discussed herein are implemented. The Nadex Rulebook is also publicly available on the Nadex website and will continue to be publicly available after the amendments to Rule 3.8 are made. Accordingly, the amendments discussed herein will not have a negative impact on Nadex's ability to comply with this Core Principle.

Rule amendments and additions have been outlined in Exhibit A. The amendments to the Rulebook are set forth in Exhibit B. Amendments to the Fee Schedule are attached in Exhibit C. Any deletions have been stricken out while the amendments and/or additions have been underlined.

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

In accordance with the 10-day review period set forth in Commission Regulation 40.6(b), the changes to the Rulebook and Fee Schedule will become effective on May 4, 2020. Nadex does not plan to begin debiting the inactivity fee from dormant accounts until July 1, 2020.

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

Nadex 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 by telephone at (312) 884-0927 or by email at Jaime.walsh@nadex.com.

Sincerely,



Jaime Walsh
Legal Counsel

EXHIBIT A

Rule	Asset	Duration/Close Time	Action	Effective Date
3.8	Dues, Fees, and Expenses Payable by Members	N/A	Add provisions for inactivity fees	5/4/2020

EXHIBIT B

Amendments of Rule 3.8

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

RULES 1.1 – 3.7 [UNCHANGED]

RULE 3.8 DUES, FEES, AND EXPENSES PAYABLE BY MEMBERS

(a) Members are not required to pay dues.

(a) Members may be charged fees in connection with the trading of Contracts in an amount to be reflected from time to time on Nadex's website.

(b) Members may be charged fees for settlement of Contracts at Expiration in an amount to be reflected from time to time on Nadex's website.

(c) Members may be charged an inactivity fee after a period of account dormancy as reflected from time to time on Nadex's website.

~~(d)~~(e) Nadex or its settlement bank may also deduct from the Member's account fees or expenses incurred in connection with the Member's trading or account activity or Nadex's administration in connection with that activity, such as fees for wire transfers, check processing via electronic check. All such fees will be charged in an amount to be reflected from time to time on Nadex's website.

~~(e)~~(f) If Nadex determines in the future to impose dues or additional fees, the Member will be provided notice of the change at the time the amended fees are filed with the Commission. The new fee structure will be implemented no earlier than on the first available trade date for which the change may be implemented according to the Commission's self-certification filing requirements as set forth in Commission Regulation §40.6(a).

RULE 4.1 – 12.73 [UNCHANGED]

End of Rulebook.

EXHIBIT C

NADEX FEE SCHEDULE

DIRECT TRADING MEMBERS

Membership Fee:

- Nadex does not charge a Membership fee to join the Exchange.

Initial Deposit:

- Direct Trading Members are required to make an initial deposit of at least \$250; no minimum balance is required thereafter.

Transaction Fees:

Nadex charges no fee for orders placed, cancelled or amended.

Direct Trading Members incur a \$1.00 Exchange trading fee per contract per side for each lot executed.

Settlement Fees:

Nadex charges no fee for contracts that settle out-of-the-money.

Direct Trading Members incur an Exchange settlement fee per contract per side for each contract that settles in-the-money based on the position size at expiration according to the following schedule:

- \$1.00 for each lot settled in-the-money.

If the per-contract settlement payout is greater than \$0, but the total fee to be charged for the position exceeds the total settlement payout for that position, Nadex will reduce its fee to the amount of the total settlement payout for that position (that is, Nadex will not charge a settlement fee that exceeds a settlement payout).

Inactivity Fees:

Direct Trading Members who have a dormant account, that is, an account that has not engaged in any trading activity for a period of twelve (12) consecutive months, will incur an inactivity fee of \$10.00 per month. If at any time a Direct Trading Member's account is subject to an inactivity fee but the account balance less than \$10.00, Nadex will reduce its fee to the amount of the remaining account balance bringing the balance to \$0. No account balance will become negative as a result of the inactivity fee. A Direct Trading Member who engages in trading activity after a 12 month dormancy will not be charged an inactivity fee until the account again becomes dormant. A dormant account that has a \$0 balance may be terminated by Nadex pursuant to Rule 3.3.

FCM MEMBERS

Membership Fee:

- Nadex does not charge a FCM Membership fee to join the Exchange.

Minimum Balance:

- FCM Members are required to make an initial deposit of at least \$100,000 and to maintain a minimum balance of uncommitted funds of \$50,000.

Transaction Fees:

Nadex charges no fee for orders placed, cancelled or amended.

FCM Members incur an Exchange trading fee per contract per side for each contract executed based on order size according to the following schedule:

- \$0.35 for each lot traded from 1 up to and including 10 lots;
- \$0.00 for each lot traded over 10.

Settlement Fees:

FCM Members incur an Exchange settlement fee per contract per side for each contract that settles in-the-money based on the position size at expiration according to the following schedule:

- \$0.35 for each lot settled in-the-money.

If the per-contract settlement payout is greater than \$0, but the total fee to be charged for the position exceeds the total settlement payout for that position, Nadex will reduce its fee to the amount of the total settlement payout for that position (that is, Nadex will not charge a settlement fee that exceeds a settlement payout).

Nadex charges no fee for contracts that settle out-of-the-money.

MARKET MAKERS

Membership Fee:

- Nadex does not charge Market Makers a membership fee.

Minimum Balance:

- Market Makers are required to make an initial deposit of at least \$500,000 and to maintain a minimum balance of uncommitted funds of \$250,000 to collateralize the trades executed on Nadex.

Transaction Fees:

Nadex charges no fee for Market Maker quotes placed, cancelled or amended.

Nadex charges its non-intermediated Market Makers an Exchange trading fee of ~~\$0.50~~ \$0.70 per contract per side for each Binary and Call Spread trade executed ~~in~~ on Nadex; and \$0.50 per contract per side for each Touch Bracket™ Knock-Out trade executed on Nadex.

Settlement Fees:

Nadex charges its non-intermediated Market Makers an Exchange settlement fee of ~~\$0.50~~ \$0.70 per contract per side for each Binary and Call Spread contract that settles in-the-money; and \$0.50 per contract per side for each Touch Bracket™ Knock-Out contract that settles in-the-money. If the total fee to be charged for the position exceeds the total settlement payout for that position, Nadex will reduce its fee to the amount of the total settlement payout for that position (that is, Nadex will not charge a settlement fee that exceeds a settlement payout).

Nadex charges no fee for contracts that settle out-of-the-money.

Additional Fees:

Market Makers will be assessed a Wide Spread Surcharge equal to 50% of the average per lot profit above \$2.00 (after standard transaction and settlement fees), in a given month. This Surcharge is applicable only to Binary contracts.

SYSTEM PROVIDERS

Nadex is interested in discussing partnership opportunities with systems providers.

Anyone interested in becoming a Nadex FCM Member or Market Maker or pursuing a partnership as a systems provider should contact us.

NADEX FEE SCHEDULE CHART:

EFFECTIVE May 4, 2020 ~~JUNE 1, 2019~~

TRADING FEES

Direct Member Exchange Trading Fees

Lots Traded	Fees Per Side
All lots traded	\$1.00

FCM Member Exchange Trading Fees

Lots Traded	Fees Per Side
All lots traded	\$0.35

Market Maker Member Exchange Trading Fees

Lots Traded	Fees Per Side
All <u>Binary and Call Spread</u> lots traded	\$0.50 \$0.70
All <u>Touch Bracket™</u> Knock-Out lots traded	\$0.50

SETTLEMENT FEES

Direct Member Settlement Fees*

Lots Settled in-the-money	Fees Per Side
All lots settled in-the-money	\$1.00

FCM Member Settlement Fees*

Lots Settled in-the-money	Fees Per Side
All lots settled in-the-money	\$0.35

Market Maker Member Settlement Fees*

Lots Settled in-the-money	Fees Per Side
All <u>Binary and Call Spread</u> lots settled in-the-money	\$0.70
All <u>Touch Bracket™</u> Knock-Out lots settled in-the-money	\$0.50

ADDITIONAL MARKET MAKER FEE

Average per Lot Profit per Month (Binaries only)	Wide Spread Surcharge
Over \$2.00	50% above \$2.00

DORMANT ACCOUNT INACTIVITY FEE

\$10.00 per month

*If the per-contract settlement payout is greater than \$0, but the total fee to be charged for the position exceeds the total settlement payout for that position, Nadex will reduce its fee to the amount of the total settlement payout for that position (that is, Nadex will not charge a settlement fee that exceeds a settlement payout).

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