



June 4, 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: Self-Certification Rule Amendments: Nadex Amends its Rule 9.2 Investigations, Hearings, and Appeals – 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. (“Nadex”, the “Exchange”) hereby submits to the Commission its intent to amend its Rule 9.2 Investigations, Hearings, and Appeals.

Nadex Rule 9.2 Section (g)(i) indicates that a hearing will be conducted within 20 business days following the receipt of a Member’s response contesting either the findings and/or proposed sanctions in any disciplinary matter. The language of this Rule has remained unchanged for over a decade. Nadex as an Exchange has grown substantially since this Rule was first put in place, and the time frame is no longer practical to accommodate the increased caseload, complexity of cases, or coordination of the schedules of the Member respondent, Compliance Department, and the hearing officer. Neither the Commodity Exchange Act nor the Commission Regulations require an Exchange to establish a deadline as to when a hearing must be held following a request by the respondent. Rather, Commission Regulation 38.707 requires that a hearing “must be promptly convened after reasonable notice to the respondent”. Accordingly, Nadex is amending its Rule to remove the 20-business day deadline and replace it with language indicating that a hearing will be conducted following reasonable notice to the Member respondent.

Nadex Rule 9.2 Section (g)(iii) requires the hearing officer to issue his/her findings within 20 business days of the hearing. This rigid requirement does not consider the schedule of the hearing officer and may not provide ample time for the hearing officer to consider complex evidence. Commission Regulation 38.708 (Decisions) states that a disciplinary panel must render a written decision “promptly following a hearing”. Accordingly, Nadex is amending its Rule to indicate that the hearing officer, effectively the disciplinary panel, will issue findings promptly following the hearing. This Section will also be renumbered as (g)(iv) to accommodate new Section (g)(iii).

Nadex is clarifying Section (g)(ii) under its Rule 9.2 to describe the process under which the parties to a hearing may submit evidence and disclose witnesses at the hearing.

Finally, Nadex is adding new Section (g)(iii) under its Rule 9.2 which would grant the hearing officer authority to question the parties, request additional documentation or information, or post-hearing briefs.

DCM Core Principles

Nadex has identified the following Designated Contract Market (“DCM”) Core Principles as potentially being affected by this amendment: Core Principle 13 (Disciplinary Procedures).

Core Principle 13 (Disciplinary Procedures), implemented by Commission Regulations 38.707 (Hearings) and 38.708 (Decisions), require a DCM to adopt rules that provide for minimum requirements for any hearing conducted pursuant to a notice of charges, including, among others, that the hearing be convened promptly after reasonable notice to the respondent, and that the findings of the disciplinary panel be issued promptly following the hearing. Nadex is amending its Rule 9.2 to reflect the language of these Regulations and accordingly, the amendments discussed herein will not have a negative impact on Nadex’s ability to comply with this Core Principle.

DCO Core Principles

Nadex has not identified any Derivatives Clearing Organization (“DCO”) Core Principles as potentially being affected by these amendments.

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

Pursuant to the 10-day filing period under Regulation 40.6(a)(3), Nadex intends to implement these new rules and amendments on trade date June 19, 2019.

Nadex hereby certifies that the additions contained herein comply with the Act, as amended, and the Commission Regulations adopted thereunder. No substantive opposing views

were expressed to Nadex with respect to any of these actions. Nadex hereby certifies that notice of these events 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 M. Walsh
Legal Counsel

EXHIBIT A

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EXHIBIT A

Rule	Asset	Duration/Close Time	Action	Effective Date
9.2	Investigations, Hearings, and Appeals	N/A	Amend time frame for hearings and hearing officer findings and clarify submission of evidence and witnesses.	6/19/2019

EXHIBIT B

Amendment of Rule 9.2

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

RULES 1.1 – 9.1 [UNCHANGED]

RULE 9.2 INVESTIGATIONS, HEARINGS, AND APPEALS

(a) Nadex has a compliance department consisting of one or more compliance staff. The Chief Regulatory Officer is responsible for overseeing the compliance department. The Compliance Department shall investigate unusual trading activity or other activity that the Compliance Department has reasonable cause to believe could constitute a violation of these Rules. Investigations and all information and documents collected or obtained in connection with an investigation shall be treated as non-public and confidential, and shall not be disclosed by any party, except in furtherance of a Nadex investigation, or as required by law or regulation, or as otherwise agreed to by Nadex. Nadex retains hearing officers, who adjudicate findings by the Compliance Department that are disputed by Members. Hearing officers and the Compliance Department may not communicate regarding the merits of a matter brought before the hearing officer without informing the Member who is the subject of the communication of its substance and allowing the Member an opportunity to respond. The Compliance Department and hearing officers may compel testimony, subpoena documents, and require statements under oath from any Member or its authorized representative. Hearing officers, Compliance Department staff and other employees or agents of Nadex working under their supervision, may not be a Member or an authorized representative of a Member or trade, directly or indirectly, in any commodity interest traded on or subject to the rules of any registered contract market.

(b) The Compliance Department will endeavor to complete any investigation within twelve months, unless there exists significant reason to extend it beyond such period. Upon the conclusion of any investigation, the Compliance Department will draft a document detailing the facts that led to the opening of the investigation, the facts that were found during the investigation, and the Compliance Department's analysis and conclusion. If the Compliance Department concludes that there is reasonable cause to believe a Member has violated Nadex's Rules or other applicable statutes or regulations, the Compliance Department will submit by to the Member whose activity is the subject of the investigation a report, by electronic mail to that Member's last known email address, that will include:

- (i) the reason the investigation was begun;
- (ii) the charges or a summary of the charges, including the rule or rules alleged to have been violated;
- (iii) the response, if any, or a summary of the response;
- (iv) a summary of the investigation conducted;

(v) findings of fact and the Compliance Department's conclusions as to each charge, including which of these Rules the Member or its authorized representative violated, if any;

(vi) a summary of the Member's, and any relevant authorized representative's, disciplinary history, if any; and

(vii) the penalty, if any, proposed by the Compliance Department.

(c) If the Compliance Department institutes an investigation in which any Affiliate of Nadex is a subject, Nadex's Chief Regulatory Officer shall notify the Commission's Division of Market Oversight of that fact. At the conclusion of any such investigation, the Chief Regulatory Officer shall provide the Commission's Division of Market Oversight with a copy of the documentation specified in subparagraph (b) of this Rule.

(d) The Member whose activity is the subject of the investigation may contest the Compliance Department's findings by forwarding a response to those findings by electronic mail to the Compliance Department within 15 days. Subject to subparagraph (a) of this Rule, the Member has a right to examine all relevant books, documents, or other evidence in the possession or under the control of Nadex, except that Nadex may withhold from inspection any documents that (i) are privileged or that constitute attorney work product, (ii) were prepared by any employee of Nadex but which will not be offered in evidence in the disciplinary proceedings, (iii) may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings, or (iv) disclose the identity of a confidential source. The Member's response must contain a detailed response to the findings and conclusions as to each charge and any other information the Member thinks is relevant.

(e) The Member whose activity is the subject of the investigation may request to enter settlement negotiations by forwarding a response to the Compliance Department's findings by electronic mail to the Compliance Department within 15 days. Subject to subparagraph (a) of this Rule, the Member has a right to examine all relevant books, documents, or other evidence in the possession or under the control of Nadex, except that Nadex may withhold from inspection any documents that (i) are privileged or that constitute attorney work product, (ii) were prepared by any employee of Nadex but which will not be offered in evidence in the disciplinary proceedings, (iii) may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings, or (iv) disclose the identity of a confidential source. The Member's response must contain a response to each charge and the Member may provide any other information the Member thinks is relevant. The outcome of settlement negotiations between the Member and the Compliance Department may include, but is not limited to, a letter of warning.

(f) If the findings of the Compliance Department are not contested by the Member, Nadex will deem those findings admitted by the Member, the findings of fact and the Compliance Department's conclusions as to each charge shall become final and the Compliance Department shall impose the penalty (if any) proposed by the Compliance Department. The Member will be notified of the imposition of any penalty and sent a copy of the notice of disciplinary action by electronic mail to that Member's last known email address.

(g) If the findings of the Compliance Department are contested, the Compliance Department's report and the Member's response contesting the Compliance Department's findings and/or proposed sanction(s) will be submitted to a Nadex hearing officer. The hearing officer may not have a financial, personal or other direct interest in the matter under consideration.

(i) The hearing officer will conduct a hearing with the Compliance Department and the Member ~~within 20 business days of receipt of the Member's response contesting the compliance officer's finding and/or proposed sanction~~ which the parties may attend telephonically. The Member respondent shall be provided reasonable notice of the hearing date. The hearing officer or the Compliance Department may extend the hearing date at its discretion for good cause shown, or by the parties' mutual consent. The formal rules of evidence shall not apply, but the hearing must be fair.

(ii) ~~Prior to the hearing, the parties may (but need not) submit proposed findings, briefs, and exhibits (including affidavits), and during the hearing the parties may present witnesses. At least 28 days in advance of a hearing, the Member respondent shall submit to the Compliance Department, and the Compliance Department shall submit to the Member respondent, copies of all books, documents, records and other tangible evidence, which each plans to rely on or refer to during its direct case at the hearing, and provide a list of the names and titles of witnesses that each plans to call on its direct case at the hearing. The hearing officer may refuse to consider any books, records, documents or other tangible evidence which was not made available to, or witnesses whose names and titles were not submitted to, the other party pursuant to this section. To the extent the Compliance Department or the Member respondent intends to call any expert witness at the hearing then such party shall provide to the other, at least 28 days prior to the date of the hearing, a summary of the expert's opinions to be offered at the hearing and the basis and/or methodology underlying such opinions. In addition, the expert's credentials (e.g., a curriculum vitae) and all documents or other materials on which the expert relied in forming his opinions shall be produced to the other party at the same time. For purposes of this provision, staff in the Compliance Department or other Nadex employee shall not be considered experts. The hearing officer may decline to consider any expert testimony beyond the scope of the submitted summary.~~

(iii) The hearing officer may question the parties or any witness during the hearing, request additional documentation or information from any party, and/or request post-hearing briefs from the parties.

~~(iii)~~ (iv) ~~Within 20 business days~~ Promptly after that hearing, the hearing officer will issue findings, which will be delivered to the Member by electronic mail to the Member's last known email address. The findings of the hearing officer will contain the following information:

- (1) a summary of the charges and any answer to the charges;

- (2) a summary of the evidence received;
- (3) findings and conclusions with respect to each charge;
- (4) an indication of each specific rule that the member was found to have violated;
- (5) a declaration of any penalty to be imposed on the Member as the result of the findings and conclusions;
- (6) the effective date and duration of that penalty; and
- (7) a statement that the Member has the right to appeal any adverse decision by the hearing officer to the Nadex board of directors, but must do so within 15 days.

(i) The hearing officer's decision shall be final on the date it is signed by the hearing officer. The hearing officer's decision shall become the final decision of Nadex after the appeal period has lapsed.

(ii) The hearing will be recorded, and all information submitted by the parties (including the Compliance Department's report and the Member's response) as well as the recording of the hearing, will be preserved by the Compliance Department, along with the hearing officer's findings, as the record of the proceedings (the "hearing record").

(h) Either the Member or the Compliance Department may appeal the decision of the hearing officer within 15 days by filing an appeal by electronic mail with the Nadex board of directors and forwarding a copy to the other parties to the appeal. Any penalties will be stayed pending appeal unless the hearing officer determines that a stay pending appeal would likely be detrimental to the exchange, other Members, or the public. The board of directors will review the hearing record and any information submitted by the Compliance Department and the Member on appeal and issue its decision, which shall be final on the date of such issuance. The Member shall be notified of the decision by electronic mail to the Member's last known email address. The hearing record, any information submitted on appeal, and the board's decisions shall be preserved as the record on appeal. The decision will contain the information listed in paragraph (f) of this Rule, except for (f)(vi), and will also contain:

(i) a statement that any person aggrieved by the action may have a right to appeal the action pursuant to Part 9 of the Commission's Regulations, within 30 days of service; and

(ii) a statement that any person aggrieved by the action may petition the Commission for a stay pursuant to Part 9 of the Commission's Regulations, within 10 days of service.

RULES 9.3 – 12.65 [UNCHANGED]

End of Rulebook.

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