



Via Portal Submission

June 26, 2019  
MGEX Submission No. 19-14

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

**RE: Rule Certification Submission Pursuant to Regulation 40.6(a); Updates to MGEX Rules**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Exchange Act (“CEAct”) Section 5c and Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), the Minneapolis Grain Exchange, Inc. (“MGEX” or “Exchange”) hereby certifies that amendment of the attached MGEX Rules complies with the CEAct and the Commission regulations promulgated thereunder. MGEX further certifies that the submission and pending changes to the MGEX Rules have been posted on the Exchange website at the following link: <http://www.mgex.com/regulation.html>. All capitalized terms used but not defined herein have the meanings assigned to them in the MGEX Rules.

**Overview of Amendments**

Chapter 21 of MGEX’s Rules provides financial safeguards and describes how the Exchange would address a loss arising from the default of one or more Clearing Members. In the highly unlikely event that the losses stemming from a default exceed the financial resources set forth in the Exchange’s default waterfall, MGEX would enter into recovery and its Rules set forth how it would address any uncovered credit loss or liquidity shortfall, as required by CFTC Regulations. The Exchange amended its Rules, as shown in this submission, to add certain recovery tools and clarify the use of others. These tools (the “Recovery Tools”), which will collectively facilitate the continuity of MGEX’s operations and clearing services in the event of recovery, include: (i) Clearing Member assessments, (ii) Member assessments and issuance, (iii) voluntary contributions, (iv) haircut settlement cycles, (v) partial tear-ups of contracts, and (vi) full tear-ups of contracts. More information on the addition or amendment of these Recovery Tools is set forth below (see Rule Amendments). The primary goal of these amendments

is to help maintain systemic stability and avoid MGEX's bankruptcy, which would result in the close out and netting of all contracts in accordance with MGEX Rule 2121.00. None of the Recovery Tools rely upon public funding or government support.

The Exchange is adding the Recovery Tools to better conform with CFTC Regulations. CFTC Regulation 39.35 requires a Subpart C DCO to "adopt explicit rules and procedures that address fully any loss arising from any individual or combined" Clearing Member Default. CFTC Regulation 39.39 requires a Subpart C DCO to maintain "viable plans" for "[r]ecovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls." The amendments address how MGEX would allocate losses that exceed available financial resources and restore a matched book, as required by these regulations.

MGEX has also made a number of housekeeping amendments to Chapter 21. With the addition of several new Rules, the Exchange found it beneficial to generally re-order the chapter to flow in a more logical manner. In addition, MGEX made clarifications, updates, and removed unnecessary clauses throughout the chapter. All material changes are discussed below.

### **Feedback Considered**

Since the Commission finalized the Subpart C CFTC Regulations in 2013, the Exchange has engaged with its regulators, market participants, and other clearing houses in a variety of ways. For example, the amendments set forth herein reflect guidance provided by the CFTC Division of Clearing and Risk, both in terms of specific comments made to MGEX and Staff Letter No. 16-61 issued to all DCOs. In determining which Recovery Tools to use, the Exchange also considered stakeholder views expressed at a CFTC roundtable on March 19, 2015 and other industry conferences. These meetings and conversations provided MGEX perspective on loss allocation tools from the point of view of Clearing Members and customers. The Exchange further evaluated opinions expressed directly to it from Clearing Members via email and phone calls.

In addition, when developing its recovery and wind-down plan, along with the Recovery Tools to support such, MGEX considered guidance and recommendations published by the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions ("CPMI-IOSCO"),<sup>1</sup> as well as the Financial Stability Board.<sup>2</sup>

The amended Rules are a product of guidance and industry feedback from Clearing Members and customers.

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<sup>1</sup> See CPMI-IOSCO's 2014 Recovery of Financial Market Infrastructures report and the 2017 Resilience of Central Counterparties: Further Guidance on the PFMI report.

<sup>2</sup> See Recovery and Resolution Planning for Systemically Important Financial Institutions guidance.

## **Rule Amendments**

### *Default Waterfall*

Prior to utilizing any Recovery Tool, MGEX would follow its default management procedures, which would include applying funds in the order listed in its default waterfall (see Rule 2109.03.). Although the Exchange renumbered its default management Rules and attempted to streamline and clarify the provisions set forth in them, the Exchange is not making any substantial changes to the default process. Rather, the changes are intended to make the process and obligations imposed on market participants clearer and allow for them to better analyze risks. Additionally, the changes clarify the definition of a “Loss.” MGEX notes that the two provisions deleted at the end of Rule 2109.03. (involving limits on the use of collateral held in segregated customer accounts and how any recovery of a Loss would be credited) appear in other Rules,<sup>3</sup> making their inclusion redundant and unnecessary.

### *Clearing Member Assessments*

MGEX amended Rule 2110.00., which provides for Clearing Member assessments, to specify the deadline by which assessments would be due (within two hours of receiving notice) and to clarify that any excess amounts would be returned to Clearing Members. All other changes are housekeeping in nature.

### *Member Assessments and Issuance*

Rule 2110.01. allows the Exchange to levy an assessment against all Memberships and/or sell additional original Memberships to address an uncovered credit loss, liquidity shortfall, or capital inadequacy. After considering feedback MGEX received from Clearing Members regarding this Rule, MGEX amended the Rule to place a cap on Member assessments since none previously existed. This cap (\$5 million collectively) will allow Members to evaluate their potential exposures. In addition, the Exchange specified a deadline of two business days by which Member assessments would be due upon the Member receiving notice.

### *Voluntary Contributions*

MGEX added new Rule 2111.00. to offer Clearing Members and market participants an opportunity to make a voluntary contribution to the Clearing House if an uncovered credit loss or liquidity shortfall remains following a Clearing Member Default. Participants may be incentivized to make a contribution to help avoid the need for MGEX to use other Recovery Tools, including haircutting gains and/or the tear-up of contracts.

### *Haircut Settlement Cycles*

MGEX amended Rule 2112.00. to make portfolio gains haircutting a Recovery Tool.

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<sup>3</sup> See Rule 2109.02. and 2119.00.

Because CFTC Regulation 39.35 requires a Subpart C DCO to fully address any loss arising from an individual or combined Clearing Member Default, MGEX believes this tool is essential. Although the default waterfall and the Recovery Tools listed above will aid in mitigating any losses, these amounts are capped, thereby making this tool and its ability to fully allocate losses necessary.

The Exchange may use variation margin gains haircutting (“VMGH”), with the approval of the MGEX Board of Directors, to allocate losses after utilizing the default waterfall and Clearing Member assessments. The tool haircuts a portion of the amounts due to Clearing Members and their customers with a net portfolio gain for a settlement cycle. At the same time, the full amount of net portfolio losses or “pays” would be collected from Clearing Members and their customers. Rule 2112.00. sets forth how MGEX would determine the haircutted amounts. For the avoidance of doubt, MGEX would never haircut initial margin, which is not allowed under the CEAct and would further destabilize the market.

The amendment also establishes the period during which VMGH could be applied. Specifically, Rule 2112.00. now provides that VMGH would last for three business days. MGEX’s Risk Management Committee (“RMC”), in consultation with the Risk Team, could shorten or lengthen this time period by one or two business days. In making this determination, the RMC would consider the existing facts and circumstances, as well as the interests of MGEX’s Clearing Members and their customers. By providing market participants with a defined duration (no more than five business days), the Rule minimizes uncertainty, which could cause additional volatility, and offers Clearing Members and their customers a means to measure and manage their risks.

While MGEX recognizes that this tool is a drastic one, VMGH would distribute the remaining loss broadly across market participants with net portfolio gains, which would help minimize the impact. VMGH would not impact accounts that had a net portfolio loss for the haircutted settlement cycle.

#### *Cooling Off Period*

MGEX is not changing its Cooling Off Period of the five business days following a Clearing Member Default. However, after taking into consideration Clearing Member feedback, MGEX amended this Rule so that it applies to both Clearing Member assessments and Member assessments. As a result, Member assessments are now restricted to the maximum obligation set forth in Rule 2110.01. during the Cooling Off Period.

#### *Partial Contract Tear-Ups*

MGEX’s addition of Rule 2114.00. introduces the possibility of both voluntary and mandatory tear-ups. First, in accordance with the Rule, at any time following a Clearing Member Default or Loss, the Clearing House may issue notice to Clearing Members and market participants providing an opportunity for them to voluntarily agree to have their proprietary positions or, with a customer’s consent, agree to have each such customer’s

positions, extinguished by the Clearing House. In this situation, MGEX would identify and contact Clearing Members whose positions (or whose customer's positions) were on the opposite side of the open defaulted positions. These Clearing Members, or their customers, may agree to partially or fully voluntarily tear-up such positions, which would help MGEX reestablish a matched book. This type of voluntary participation would allow Clearing Members and customers to control their exposures to MGEX.

Second, Rule 2114.00. also introduces mandatory partial tear-ups as a tool for the Exchange to reestablish a matched book. MGEX may tear-up defaulted positions within a Defaulted Clearing Member's portfolio. In addition, following a default or Loss, the Clearing House, with the RMC's approval, may tear-up a portion of the remaining open positions of the Defaulted Clearing Member through a partial tear-up of proprietary and customer positions of non-defaulted Clearing Members and non-defaulted customers of the Defaulted Clearing Member. In that event, the RMC would determine the appropriate scope of each partial tear-up in accordance with procedures stated in Rule 2114.00. The RMC would first determine whether a partial tear-up is appropriate or whether the Exchange should move immediately to a full termination of all contracts (see below for more information on full tear-ups), taking into consideration any recommendation by the Board of Directors. Such determination, and any recommendation, will (i) be based upon then existing facts and circumstances; (ii) support the integrity of the Clearing House and the stability of the financial system; (iii) take into consideration the interests of Clearing Members and market participants; and (iv) aim to extinguish the Defaulted Clearing Member's open proprietary and customer positions and any additional positions deemed necessary to mitigate further disruptions to the markets affected by the remaining open positions of the Defaulted Clearing Member.

If any proprietary or customer positions of a Defaulted Clearing Member remain open following the last VMGH settlement cycle, then the Clearing House will conduct a partial tear-up process of proprietary and customer positions of non-defaulted Clearing Members and non-defaulted customers of the Defaulted Clearing Member, provided that the RMC determines the appropriate scope of the tear-up. A partial tear-up may include a line-by-line tear-up against the remaining open positions of the Defaulted Clearing Member. In this situation, the Clearing House would proportionately extinguish contracts held by non-Defaulted Clearing Members, their non-defaulted customers, and the non-defaulted customers of the Defaulted Clearing Member that are opposite the Defaulted Clearing Member's remaining open positions relative to the size of such remaining open positions.

As previously stated, tear-ups are designed to enable MGEX to reestablish a matched book and allow the Exchange to continue providing clearing services. Because Clearing Members and their customers would lose the torn-up positions, MGEX recognizes they may incur replacement costs if they reestablish such market positions. However, since Rule 2114.00. is intended to enable MGEX to tear-up only those contracts necessary to reestablish a matched book, this tool minimizes the number of contracts extinguished, which reduces costs for Clearing Members and their customers.

### *Full Contract Tear-Ups*

As alluded to above, a full tear-up of contracts is possible, which would involve extinguishing all open positions. Amended Rule 2115.00. allows for the full tear-up of contracts if the MGEX Board of Directors mandates a full tear-up or if the Clearing House is unable to satisfy all losses despite using all available tools. A determination to conduct a full tear-up must be in furtherance of the integrity of the Clearing House and the stability of the financial system, as stated above. Given the extreme nature of the tool, MGEX would not anticipate its use if a partial tear-up would be effective.

The Exchange notes that the tear-up of contracts in Rule 2115.00. differs from that in Rule 2121.00. Extinguishing all contracts through Rule 2115.00. would allow MGEX, in theory, to continue providing clearing services if market participants reestablished their positions. Because MGEX is essentially a one-contract market, the Exchange is cognizant that its business may not recover if Clearing Members withdraw their memberships and market participants choose not to return to the market. It nonetheless believes this tool is appropriate given that it would at least allow an opportunity for recovery and remaining Clearing Members to elect to reestablish their positions. Rule 2121.00., on the other hand, would be triggered by a Bankruptcy Event, which would subject MGEX to the Bankruptcy Code.

### *Recovery of Loss*

Following the utilization of the default waterfall and any Recovery Tools, MGEX may take commercially reasonable steps to recover the amounts used to cover a Loss. MGEX has amended Rule 2119.00. to set forth the order in which MGEX would make distributions if it subsequently recovered any funds from a defaulting Clearing Member. These changes are necessary because several Recovery Tools have been added, as described above.

In accordance with revised Rule 2119.00., the net amount of any recovered funds would be credited to non-defaulted Clearing Members, and market participants if applicable, on a pro rata basis in the following order: (i) their voluntary contributions, (ii) Clearing Members' (and their customers' if applicable) aggregate VMGH applied, (iii) Clearing Members' assessments, and (iv) Clearing Members' security deposits, each in the order listed. If any amount remains afterward, it may be credited to MGEX for the amount of the Clearing House reserve fund utilized in the default(s).

### *Limited Recourse*

MGEX has added limited recourse as a component of its Rules in the event that despite all financial resources and tools available to it, a Bankruptcy Event occurs. Rule 2120.00. provides that Clearing Members and market participants will have no claim against any other funds or entity, including MGEX and its directors, officers, or employees. However, Clearing Members may have a claim on any recovery from a Defaulted Clearing Member in the amount of the aggregate VMGH applied to positions (proprietary and customer). If the recovery is less than the aggregate VMGH applied, non-defaulted Clearing Members

and their customers, as well as the non-defaulted customers of the Defaulted Clearing Member, will share pro rata in the recovery.

The additions to Rule 2120.00. help promote the continuity of clearing by providing that MGEX's usage of Recovery Tools is final and not subject to challenge or recourse. The Rule is designed to prohibit further claims stemming from VMGH or torn-up positions, thereby providing certainty and finality to these actions. Such certainty should enable MGEX and its Clearing Members to replenish their collateral without concern that such replenishment may be used to reimburse the prior VMGH or holders of torn-up positions; the limited recourse provision means those contributions are protected against any claims or challenges.

#### *Close-out Netting and Offset*

Finally, MGEX made clarifying revisions to Rule 2121.00. These changes provide that if the Exchange conducts a VMGH settlement cycle, those haircutted funds will not be an Exchange obligation subject to the provisions of Rule 2121.00. In other words, if MGEX haircuts gains, the lack of payment by the Exchange of the haircutted amounts will not be considered a failure by MGEX to deliver such funds. In addition, Rule 2121.00. clarifies how positions would be valued in connection with close out and netting procedures set forth in Rule 2121.00.

#### **DCO Core Principles**

The Exchange has reviewed the core principles for derivatives clearing organizations ("DCO Core Principles") and has determined that the amendments comply with the requirements of such principles. During the review, MGEX identified the following DCO Core Principles as potentially being impacted:

- *DCO Core Principle E – Settlement Procedures:* The amendments provide that if Losses remain after using the funds available to cover a default (including the default waterfall and assessments), MGEX may modify a settlement cycle to conduct VMGH. In that event, MGEX would collect payments from Clearing Members with net portfolio losses and make payments to non-defaulting Clearing Members with net portfolio gains, however, those payments would be haircutted in accordance with Rule 2112.00. These changes therefore would impact MGEX's settlement procedures in the limited circumstances of VMGH.
- *DCO Core Principle G – Default Rules and Procedures:* Many of the amendments address the actions the Exchange will take and allow following a default and thus augment MGEX's default rules and procedures. Some of these actions were already in MGEX's Rules (e.g., assessments), but have been clarified. Others, such as VMGH and voluntary contributions, have been added to specifically address how MGEX would allocate losses that exceed the financial resources available to MGEX in accordance with CFTC Regulation 39.35.

- *DCO Core Principle L – Public Information:* Core Principle L requires DCOs to provide market participants with sufficient information to enable them to identify and evaluate accurately the risks and costs associated with using the services of the DCO and to have clear and comprehensive rules and procedures. The amendments enhance transparency with respect to the procedures MGEX will follow in various circumstances and will be incorporated into MGEX’s publicly available Rulebook, thereby further ensuring that the information available to the public is accurate, clear, and comprehensive. These Rules will allow Clearing Members to better measure the impact to them if a Loss occurs.
- *DCO Core Principle O – Governance Fitness Standards:* The amended Rules provide that the Board of Directors will (i) approve of the use of VMGH prior to its utilization, and (ii) determine whether MGEX should conduct a full tear-up of contracts. In addition, the RMC will determine (i) whether to extend or reduce the duration of VMGH, (ii) whether MGEX should conduct partial tear-ups, and (iii) the appropriate scope of partial tear-ups. Such determinations must be based on then existing facts and circumstances, support the integrity of the Clearing House and the stability of the financial system, and take into consideration the interests of Clearing Members and market participants. CFTC Regulation 39.32 requires Subpart C DCOs to have governance arrangements that support the stability of the broader financial system and other relevant public considerations and requires the Board to ensure the DCO’s design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of Clearing Members, customers, and other relevant stakeholders. The governance arrangements set forth in the amended Rules support the stability of the broader financial system and public interest considerations in compliance with this requirement.
- *DCO Core Principle R – Legal Risk:* Core Principle R requires DCOs to operate pursuant to a well-founded, transparent, and enforceable framework that describes the steps a DCO would take to address a default of a Clearing Member and other significant aspects of a DCO’s risk management procedures. As explained above, the amendments further address the actions the Exchange will take and allow following a default of a Clearing Member, thereby enhancing the overall transparency of MGEX’s legal framework.

Pursuant to MGEX Bylaw 204.01., the MGEX Board of Directors unanimously approved the attached amendments to the MGEX Rulebook. There were no substantive opposing views expressed by the Board of Directors, nor is the Exchange aware of any substantive opposing views with respect to this filing.

The attached amendments are to be effective immediately after the 10<sup>th</sup> business day following the date of this submission. If there are any questions regarding this submission, please contact me at (612) 321-7143 or [lhopkins@mgex.com](mailto:lhopkins@mgex.com). Thank you for your attention to this matter.



Sincerely,

A handwritten signature in black ink that reads "Lindsay Hopkins". The signature is written in a cursive style with a large, looped initial "L" and a distinct "H".

Lindsay R. Hopkins  
Clearing House Counsel

## EXHIBIT A

The following MGEX Regulations are to be amended. Additions are underlined while deletions are ~~marked through~~.

**CHAPTER 21**  
**CLEARING HOUSE RULESREGULATIONS**

- 2100.00. Requirements For Clearing
- 2100.01. Electronic Trading System Clearing
- 2100.02. Clearing Privileges
- ~~2100.03.~~~~2120.00.~~ Clearing Member Risk Management
- ~~2101.00.~~~~2118.00.~~ Settlement Banks Available For Use
- ~~2102.00.~~~~2115.00.~~ Acceptance Of Give-Up Trades
- 2103.00. Order Of Delivery
- ~~2104.00.~~~~2101.00.~~ Deadlines, Fees And Fines ~~– Amounts And Collections~~
- ~~2104.01.~~~~2101.01.~~ Clearing Fee
- ~~2105.00.~~~~2104.00.~~ Security Deposit
- ~~2106.00.~~~~2102.00.~~ Margins
- ~~2106.01.~~~~2119.00.~~ Protection Of Customer Funds
- ~~2107.00.~~~~2117.00.~~ Finality Of Settlement
- ~~2108.00.~~~~2105.00.~~ Liquidity Event
- ~~2108.01.~~~~2105.01.~~ Requirement To Establish Uncommitted Repurchase Agreement
- ~~2109.00.~~~~2116.00.~~ Clearing Member Financial Emergency
- ~~2109.01.~~~~2106.01.~~ Clearing Member Insolvency
- ~~2109.02.~~~~2106.00.~~ Protection Of Clearing House: Default By A Clearing Member
- ~~2109.03.~~~~2106.02.~~ Losses Borne By MGEX: Application of Funds
- ~~2106.03.~~ ~~– Rights Of Exchange For Recovery Of Loss~~
- ~~2109.04.~~~~2106.04.~~ Management of ~~Obligations For~~ Default And Subsequent Clearing Cycles
- ~~2109.05.~~~~2113.00.~~ Collateral~~Security Deposits To Be Restored~~
- ~~2110.00.~~~~2106.05.~~ Clearing Members: Assessments~~Satisfaction Of Clearing House Obligations~~
- ~~2110.01.~~~~2112.00.~~ Memberships: Special Assessments And Issuance
- ~~2111.00.~~ Voluntary Contributions
- ~~2112.00.~~~~2107.00.~~ Haircut Settlement Cycles~~Limited Recourse And Termination Events~~
- ~~2107.01.~~ ~~– Haircut Settlement Cycles And Termination Of Contracts~~
- ~~2113.00.~~~~2109.00.~~ Cooling Off Period And Multiple Defaults
- ~~2114.00.~~ Partial Tear-Ups
- ~~2115.00.~~ Termination of Contracts
- ~~2116.00.~~~~2108.00.~~ Details of Implementation And Auctions
- ~~2117.00.~~~~2114.00.~~ Use Of Customer Gross Margin Files
- ~~2118.00.~~~~2110.00.~~ No Action; Limitation Of Liability
- ~~2119.00.~~ Recovery of Loss
- ~~2120.00.~~~~2107.02.~~ Limited Recourse And Non-Petition
- ~~2121.00.~~~~2111.00.~~ Close-Out Netting And Offset

**CHAPTER 21**  
**CLEARING HOUSE RULESREGULATIONS**

**2100.01. ELECTRONIC TRADING SYSTEM CLEARING.**

In addition to compliance with the applicable ~~Regulations~~ Rules in this Chapter, all transactions for Futures or Options traded on the Electronic Trading System shall be submitted to the Clearing House for clearing. Submission of the data shall be at times determined by and in a format approved by the Exchange.

~~Except for exchange for physical transactions and qualified transfer trades, only~~ Any trade required for clearing and those trades entered, executed and matched by the Electronic Trading System shall be submitted for clearing.

Upon acceptance of the submitted trade data and completion of the clearing process, a recapitulation statement of all trades and positions shall be produced and sent to the respective Clearing Member's electronic mail account.

Each Clearing Member shall be responsible for receipt and review of the recapitulation statement. The Exchange shall not be liable for the inability of a Clearing Member to receive a statement sent by the Exchange.

**2100.02. CLEARING PRIVILEGES.**

In order to clear trades at MGEX, a Clearing Member must be granted clearing privileges by the Exchange. The Exchange may revoke said clearing privileges for cause at any time.

Clearing privileges may be granted and retained only if and when the terms and conditions set forth below have been met:

- A. A Clearing Member must have completed and remain in compliance with the terms contained in the Application for Clearing Privileges and the Clearing Agreement.
- B. A Clearing Member must be in good financial standing and meet the minimum financial requirements as may be determined by the Exchange.
- C. A Clearing Member must have the personnel, and computer hardware and software to effectively communicate with MGEX and otherwise conduct the business of clearing in an efficient manner.
- D. A Clearing Member must be the Record Owner of one (1) or more Memberships which shall be pledged to MGEX. A pledged Membership shall mean the Exchange will have first claim to the proceeds of any sale of such Membership. This pledge shall have priority over any other claim or lien filed pursuant to Chapter 3 of the MGEX Rules ~~and Regulations~~. At least one (1) Record Holder of such Memberships must be authorized by the Clearing Member to act or execute contracts on behalf of, and otherwise represent the interests of the Clearing Member. Furthermore, such Memberships shall not be included as part of the required security deposit with the Clearing House and shall not be used as value to meet the Clearing Member's margin requirements.

- E. If another Person(s) (individually or collectively known as the parent) owns or controls, directly or indirectly, twenty percent (20%) or more of a Clearing Member, the parent must guarantee the obligations of the Clearing Member's non-segregated accounts including those accounts held or controlled by the parent, whether or not such parent is a Member of MGEX. The Exchange shall determine whether a guarantee is adequate. This requirement may be waived at the discretion of the Exchange.

#### 2100.03.2120.00. **CLEARING MEMBER RISK MANAGEMENT.**

All Clearing Members must maintain current written risk management policies and procedures, and ensure they are able to perform proper risk management and operational functions at all times. Upon request of the Exchange or the ~~Commodity Futures Trading Commission (CFTC)~~, the written risk management policies and procedures and other related information and documentation must be promptly made available for review.

The Exchange shall have authority to develop and implement risk control policies for customer and proprietary transactions. Further, the Exchange shall have authority to take such action, including but not limited to: imposing enhanced capital requirements, imposing enhanced margin requirements, prohibiting an increase or requiring a reduction in positions, and liquidating or transferring positions when, in the sole discretion of the Exchange, such action is necessary to effectively manage risk posed to the Exchange by a Clearing Member.

#### 2101.00.2118.00. **SETTLEMENT BANKS AVAILABLE FOR USE.**

The Exchange shall have the authority to approve settlement banks used by the Exchange and its Clearing Members. Each Clearing Member must maintain an account at an Exchange approved settlement bank for purposes of making daily cash settlements for variation and collateral margin with the Exchange.

#### 2102.00.2115.00. **ACCEPTANCE OF GIVE-UP TRADES.**

All give-up trades containing the necessary trade data pursuant to MGEX **Rule 2100.00.**, including customer identification, quantity, and price, which are entered by the executing Clearing Member by the deadline set forth in **Resolution 2101.00.C.** must be accepted and transferred to the account of the carrying Clearing Member on the same business day. If the executing Clearing Member does not provide said information by the deadline, then the executing Clearing Member will retain the position until the following business day. All give-up transfer trades are due at MGEX at such time as determined by the Exchange.

#### **2103.00. ORDER OF DELIVERY.**

All balances of commodities for cash contract or cash delivery shall be made on the basis of the present Exchange Rule pertaining thereto. When deliveries are made, the oldest trades on the books shall be closed first.

#### 2104.00.2101.00. **DEADLINES, FEES AND FINES--AMOUNTS AND COLLECTIONS.**

The schedule of deadlines is subject to change at any time by the Exchange. The schedule of deadlines shall at all times be those requirements most recently adopted. The amount due for

errors or any other fees charged or collected by the Exchange shall be billed on a monthly basis unless otherwise specified by the Exchange.

If the offense becomes frequent, the President or his/her designee may call for additional permanent ~~margins-collateral~~ or take such other action as is deemed necessary.

Any Member making an error in his/her daily statement to the Clearing House may be fined for each error made (see [Res. 2101.00.C.](#))

#### 2104.01.~~2101.01.~~ CLEARING FEE.

~~Pursuant to the provisions of Rule 231.00, the Exchange has adopted this Regulation:~~

A.——The Exchange shall set clearing fees -from time to time and shall make such fees publicly available. The Exchange may elect to waive or modify fees.

B.——Payment of the ~~C~~clearing ~~F~~fee will be due upon receipt of invoice ~~at the end of each month~~ for the transactions (whether purchases, sales or deliveries) executed on the Exchange ~~during that month.~~ ~~Payment is to be submitted to the Treasurer of the Corporation.~~

#### 2105.00.~~2104.00.~~ SECURITY DEPOSIT.

Each Clearing Member shall deposit with the Clearing House as security for its obligations thereto such amount as determined by the Exchange. The form of such deposit shall also be determined by the Exchange. The Exchange may change the amount and form of such deposit as necessary. Deposits may be withdrawn on written request when a Clearing Member ceases to be a Clearing Member and the Exchange has determined that all contracts and obligations with the Exchange have been settled.

#### 2106.00.~~2102.00.~~ MARGINS.

The Exchange shall set margin requirements at a level that it believes protects the interests of ~~B~~buyers and ~~S~~ellers and the Exchange. The Exchange shall accept, as margin, cash or United States Treasury securities. Cash margin requirements shall be submitted by wire transfer of funds or other acceptable method approved by the Exchange. Cash and United States Treasury securities shall be submitted at times determined and posted by the Exchange. United States Treasury securities shall be maintained in multiples of \$~~5~~1,000. The Exchange shall value securities as it deems appropriate. The President or his/her designee may, at their discretion, require of any Member or ~~m~~Market ~~p~~Participant a margin upon any or all of such Member or ~~m~~Market ~~p~~Participant's open trades which are deemed unduly insecure or hazardous in such amount as deemed advisable. Calls for such margin shall be paid by the Clearing Member within one business day or earlier if so requested. Further, the Exchange shall collect daily intra-day variations from Clearing Members apart from, and in addition to, any margin or daily settlement variation payments and collects.

Margin requirements are subject to change at any time but shall at all times be those requirements most recently adopted, publicly posted, and in compliance with the requirements of CFTC Regulation 39.13(g)(8), as amended.

Clearing Members called for margins under this ~~Regulation~~-Rule shall pay by the deadline announced by the Exchange. An extension of time for such payments can only be granted by the

President or his/her designee. In such cases the extension of time so granted shall be noted on the written call, and copy of said call shall be kept in the files of the Exchange.

Should a Clearing Member fail to deposit balances for additional margin as required in this Regulation Rule, or should the President or his/her designee deem the transaction of any Member or Market Participant unduly insecure or hazardous, the Exchange may direct that the Member or Market Participant close out all or a portion of the trades, or that the Member or Market Participant transfer all or a portion of the trades to the books of another Clearing Member, as the situation may require. If such requests are not complied with within one (1) hour, the Exchange may, with the consent of the President or his/her designee, originate orders to transfer or close out all or a portion of the Member or market participant's trades, as the situation may require. Any such action shall be taken with due consideration to the positions of customers.

All differences between the contract price reported and accepted and the price at which the property may be bought or sold as a consequence of a Member or Market Participant's failure to fulfill the obligations as set forth in this Regulation and other Rules shall be included in the ~~constitute the rule and~~ measure of damages/losses against the Member or Market Participant so failing, and the differences shall be calculated, adjusted and settled within the time and in the manner and form determined by the Exchange.

Any financial obligations owed by a Clearing Member to the Exchange, which remain outstanding after all the Member or Market Participant's trades have been closed out, may be satisfied through the Member or Market Participant's security deposit with the Clearing House or such other assets, collateral or guarantees as necessary to satisfy the financial obligations.

#### 2106.01.2119.00. PROTECTION OF CUSTOMER FUNDS.

All funds deposited with the Exchange on behalf of customers of a Clearing Member shall be held in an account identifiable as "customer segregated" in accordance with the Commodity Exchange Act and CFTC Regulation 1.20, as amended. All investment use of such funds shall comply with the investment standards of the Commodity Exchange Act and CFTC Regulation 1.25, as amended, including, but not limited to, concentration limits and permitted investments.

#### 2107.00.2117.00. FINALITY OF SETTLEMENT.

Provided there are no accounting and/or clerical errors, payments of funds or transfer of funds to and from MGEX, including, but not limited to, intraday and end of day variation, margin payments and security deposits, are final and unconditional when effected and cannot be reversed.

#### 2108.00.2105.00. LIQUIDITY EVENT.

In order to satisfy CFTC Regulations and prudential liquidity standards, the Exchange has established this Rule.

~~In the event the Clearing House requires liquidity to enable it to promptly meet all of its payment obligations to Clearing Members for same day settlement, the Clearing House will first attempt to obtain liquidity through the asset sale of pledged collateral, followed by the application of any uncommitted funding arrangements, and then through the use of its committed lines of credit and any committed repurchase agreements.~~ In the event the Clearing House is unable to obtain sufficient funds and liquidity to promptly meet same day settlement and payment through such means, the Clearing House may declare the occurrence of a Liquidity Event. In such an event,

the Clearing House has the authority in its sole discretion to take the following actions, in the order listed, to secure same day liquidity:

- A. Substitution of Guaranty Fund Cash.** The Clearing House may substitute the cash deposited by one or more Clearing Members in a guaranty fund with U.S. Treasuries deposited as performance bond or guaranty fund by the Clearing Member(s) that is(are) the initiating cause of the Liquidity Event. The amount of cash substituted shall be equivalent to U.S. Treasuries at a haircutted market value (determined by the Clearing House as of the prior day's close of business utilizing a recognized third party source). Any U.S. Treasuries transferred pursuant to this Rule shall be applied as a guaranty fund deposit on behalf of any such Clearing Member whose cash was substituted and will be allocated pro rata among any Clearing Members with cash deposits who are not the initiating cause of the Liquidity Event. The substitution of U.S. Treasuries for the Clearing Member's guaranty fund deposit will be limited to the size of the Clearing Member's guaranty fund deposit at the time of the Liquidity Event. For any substitution of U.S. Treasuries for cash in a guaranty fund, the impacted Clearing Member may, within 24 hours of substitution, request that the Clearing House replace the cash within 29 business days of the date of the substitution. Any Clearing Member requesting cash replacement will receive the original amount of cash deposited and accessed by the Clearing House, regardless of the value of cash received by the Clearing House upon liquidation of the U.S. Treasuries.
- B. Substitution of Performance Bond Cash:** The Clearing House may substitute the cash deposited by one or more Clearing Members as performance bond with U.S. Treasuries held as collateral by the Clearing House. The amount of cash substituted shall be equivalent to the U.S. Treasuries at a haircutted market value (determined by the Clearing House as of the prior day's close of business utilizing a recognized third party source). Any U.S. Treasuries transferred pursuant to this Rule shall be applied as a performance bond deposit on behalf of any such Clearing Member whose cash was substituted and will be allocated pro rata among any Clearing Members with cash deposits. The substitution of U.S. Treasuries for the Clearing Member's performance bond held by the Exchange will be limited to the size of the Clearing Member's performance bond at the time of the Liquidity Event. For any substitution of U.S. Treasuries for cash as performance bond, the impacted Clearing Member may, within 24 hours of substitution, request that the Clearing House replace the cash within 29 business days of the date of the substitution. Any Clearing Member requesting cash replacement will receive the original amount of cash deposited and accessed by the Clearing House, regardless of the value of cash received by the Clearing House upon liquidation of the U.S. Treasuries.

In order to ensure the Clearing House can obtain sufficient cash from the above paragraphs, the Clearing House may notify any Clearing Member that is a U.S. Government Securities Broker-Dealer or has a U.S. Government Securities Broker-Dealer affiliate to replace its non-cash performance bond assets with cash within 60 minutes from the time of notification. To the extent that a Clearing Member(s) fails to provide cash within 60 minutes or the request occurs after 3:00 p.m. Central Time, the Clearing House may debit cash from that Clearing Member's settlement bank account in the amount of the clearing member's non-cash performance bond assets.



- C. Transfer or Disbursement of Collateral as Compensation for Portfolio Auction, Sale, or Transfer.** In lieu of satisfying a payment owed from any auction, sale, or transfer of an insolvent, defaulted, or suspended Clearing Member's or customer's portfolio in cash to an auction winner, purchaser, or transferee, the Clearing House may satisfy such payment owed to such persons by transferring Federal Reserve discount window eligible securities with a haircutted market value (determined by the Clearing House as of the prior day's close of business utilizing a recognized third party source) equal to the amount of such obligation.

**2108.01.2105.01. REQUIREMENT TO ESTABLISH UNCOMMITTED REPURCHASE AGREEMENT.**

Each Clearing Member that is a U.S. Government Securities Broker-Dealer or has a U.S. Government Securities Broker-Dealer affiliate shall, if required by MGEX, enter into (or arrange for such affiliate to enter into) a master repurchase agreement with MGEX on terms substantially similar to those set forth by the Clearing House.

**2109.00.2116.00. CLEARING MEMBER FINANCIAL EMERGENCY.**

If at any time the Exchange, in its sole discretion, determines that there is a substantial question as to whether a financial emergency exists or may exist with respect to any Clearing Member, or that the Clearing Member is no longer in Good Standing, the Exchange may suspend or take any other action to protect the best interests of the marketplace, Clearing Members or the Exchange.

The Exchange shall have no liability regarding its use of the discretionary power described herein; neither shall the Exchange be liable for actions taken pursuant to MGEX Rules ~~and Regulations~~, procedures, or actions allowed by law.

**2109.01.2106.01. CLEARING MEMBER INSOLVENCY.**

If a Clearing Member becomes insolvent, the Insolvent Clearing Member, as such term is defined in Chapter 1, must immediately notify the Exchange of such insolvency. The Insolvency of a Clearing Member shall be announced by the Exchange and thereupon such Clearing Member shall be deemed automatically Suspended. When Suspended, the Exchange may permit the Clearing Member ~~unless otherwise permitted by the Exchange~~ to continue limited operations for the purpose of transferring or liquidating positions, or otherwise mitigating losses. If a Clearing Member becomes insolvent or for other reasons is Suspended, the officers, owners or partners who are Members of the Exchange may also be Suspended by the Exchange.

When an Insolvent Clearing Member is Suspended, the Exchange may exercise any or all of its rights under MGEX Rules ~~and Regulations~~.

**2109.02.2106.00. PROTECTION OF CLEARING HOUSE: DEFAULT BY A CLEARING MEMBER.**

If a Clearing Member fails promptly to discharge any obligation to MGEX, its security deposits, its margins and performance bonds on deposit with MGEX, its collateral, and any of its other assets available to the Exchange shall be applied by the Exchange to discharge the obligation, provided that MGEX will not apply any collateral held in segregated customer accounts to any payment obligations arising from a default in a Clearing Member's proprietary account. The Exchange will

also have the right to immediately attempt to sell any and all Memberships owned by such Clearing Member, whether pledged in accordance with Rule 2100.02.D. or not, and will have the exclusive right to the proceeds of such sale, which may be used to discharge the obligation.

Further, the Exchange may make immediate demand upon any guarantor of the Clearing Member. Upon demand and without waiting for application of all available assets of the Clearing Member or a formal accounting, such guarantor shall pay the Exchange by the time and date set by MGEX. Upon a Clearing Member Default, the Exchange may act immediately to attempt to transfer to alternate Clearing Members all customer positions and associated collateral (collateral held by the Exchange on behalf of the Defaulting Clearing Member for its customer if permitted).

If a default occurs in a segregated customer account, then the Exchange has the right to liquidate and apply toward the default all open positions and customer performance bond deposits in the account of the Defaulting Clearing Member. Accordingly, positions and collateral deposited by customers not causing the default are at risk if there is a default in their Clearing Member's segregated customer account. Following a default in a segregated customer account, MGEX can apply any excess proprietary funds and assets of the Defaulting Clearing Member.

~~The Clearing Member shall immediately make up any deficiencies in its security deposit resulting from the application of such funds prior to the close of business on the next banking day.~~ The Exchange shall be under no obligation to forward any variation pays or settlement funds to a Defaulting Clearing Member.

In addition to application of the available assets of the Defaulting Clearing Member (the priority of which is further described in Rule 2109.03, ~~2106.02~~), the Exchange, President, Treasurer, Chief Risk Officer, or other designee may take any other actions that it determines necessary to protect MGEX or other Clearing Members. Such actions include, but are not limited to, actions authorized elsewhere within the MGEX Rules, the suspension of clearing privileges until revoked or reinstated by the Board or its designee, pursuit of legal action, retention of variation pays and settlement funds, and request for additional security deposit and/or performance bonds. The detailed implementation of the process of finalizing losses with respect to a Clearing Member Default, including the liquidation, allocation, auction or sale of positions or assets of the Defaulting Clearing Member shall be conducted by the Exchange in its sole discretion.

The Exchange, Board, committees, officers or employees, and any qualified third party, including another Clearing Member, authorized by the Exchange to act in the place of the Defaulting Clearing Member shall have no liability arising from a failure by a Clearing Member to discharge its liabilities; neither shall they be liable for actions taken pursuant to MGEX Rules, procedures, or actions allowed by law. The appointment of a qualified third party does not absolve a Defaulting Clearing Member of any of its obligations, and the actions of such qualified third party will be binding upon the Defaulting Clearing Member. Neither the Board, committees, the Exchange, nor any of its officers, directors, or employees, shall be liable for any losses, damages, or costs, including direct, indirect, incidental, and consequential damages, arising out of the performance or decisions of the qualified third party or Defaulting Clearing Member.

The Exchange may establish such procedures as necessary which prescribe in detail how the protections under the MGEX Rules will operate. Such procedures shall constitute part of the MGEX Rules.

2109.03, ~~2106.02~~, **LOSSES BORNE BY MGEX: APPLICATION OF FUNDS.**

Should MGEX bear a loss resulting from the ~~actions or a~~ Default of a Clearing Member, ~~including but not limited to the insufficiency of the security deposit, margins, bonds, guarantees or other assets of such Clearing Member to fully meet its obligations to MGEX; the insolvency of a Clearing Member; or the insolvency of a depository or settlement bank; or larceny, embezzlement, or for any other cause,~~ then such loss shall be met by applying the funds listed below. In addition and for the avoidance of doubt, Clearing Members are responsible for bearing any loss of funds or collateral associated with the failure or insolvency of a depository or settlement bank, and should a Clearing Member Default as a result of such bank failure or insolvency, MGEX will use the funds listed below. ~~and made good promptly by the use and application of f~~MGEX will use funds from the following sources, in the order of priority hereafter listed, with each source of funds to be completely exhausted, to the extent practical, before the next following source is applied. While such application of funds shall be mandatory, the detailed implementation of this ~~Regulation-Rule~~ shall be the responsibility of the Exchange.

- A. Excess funds of the Defaulting Clearing Member, including any partial payment amounts, ~~or~~ settlement funds, or variation gains.
- B. Security deposits of the Defaulting Clearing Member.
- C. Margins and performance bonds of the Defaulting Clearing Member on deposit with MGEX, payments made by a guarantor of the Defaulting Clearing Member, and any other assets of the Defaulting Clearing Member.
- D. Such assets of the MGEX Clearing House reserve fund.
- E. Security deposits of non-defaulting Clearing Members shall be applied toward meeting a loss in direct proportion to the total security deposit requirement of each Clearing Member.
- F. Such surplus funds of the Exchange as may be in excess of funds necessary for normal business operations. No such surplus shall be assumed until approved by the Executive Committee or the Board.

In the event that a Clearing Member Default necessitates the application of these funds, Clearing Members must make good any deficiency in security deposits or margins and performance bonds pursuant to the requirements and deadlines set forth in MGEX Rule 2109.05.

The Exchange may borrow such funds or draw such funds as necessary against any line of credit at any time for such purposes under this ~~Regulation-Rule~~ to cover any obligations or losses of the Exchange. Any borrowing of funds shall not relieve any Clearing Member from their obligations under this and other Rules~~Regulation, or from the~~ application of their security deposits, ~~or from any assessments levied by MGEX pursuant to Regulations 2106.05 or 2112.00.~~

The Exchange may obtain and maintain any default insurance. Such insurance shall inure to and shall be for the sole benefit of the Exchange. Proceeds from any default insurance, and the right to any proceeds, shall be paid to and belong solely to the Exchange.

### ~~2106.03. RIGHTS OF EXCHANGE FOR RECOVERY OF LOSS.~~

If the security deposits, margins, performance bonds, guarantees and other assets of a Defaulting Clearing Member are insufficient to satisfy all of its obligations to MGEX, including all claims

against the Exchange by reason of its substitution for that Clearing Member pursuant to Rule 701.00., the Exchange shall nonetheless pay all such claims, which shall be deemed a loss (hereinafter "Loss") to it and which shall be a liability of the Defaulting Clearing Member to the Exchange, which the Exchange may collect from the assets of such Clearing Member available to it or by process of law. A Loss may also be an uncovered credit loss. The definition of a Loss includes, but is not limited to, any amounts associated with the liquidation, transfer, and other costs related to managing the Default of a Clearing Member.

~~For the avoidance of doubt and as set forth in Regulation 2106.00., MGEX will not apply any collateral held in segregated customer accounts to satisfy a payment obligation arising from a default in a Clearing Member's proprietary account.~~

~~If a Loss for which Clearing Members' security deposits or other assets have been accessed by MGEX is afterward recovered by the Exchange, in whole or in part, the net amount of such recovery shall be credited to such persons or firms (whether or not they are Clearing Members at the time of recovery) in proportion to the amount of the security deposit or assets accessed by MGEX.~~

#### **2109.04.2106.04. MANAGEMENT OF OBLIGATIONS FOR DEFAULT AND SUBSEQUENT CLEARING CYCLES.**

As of the clearing cycle in which a default occurs, the Clearing House shall aggregate the following assets: any partial payment amounts, settlement funds, variation pays, any excess security deposits, any excess margins and performance bond from the prior clearing cycle, ~~any partial payment by the Clearing Member for the default cycle,~~ and any other available assets of the Clearing Member. Such assets shall be allocated first to any net settlement variation payment obligation of the Defaulting Clearing Member to the Clearing House. If the funds are not sufficient to satisfy the Clearing Member's settlement variation payment obligations for the default cycle, then the Clearing House shall apply the funds to such Clearing House obligations, pro rata relative to the size of such Clearing House obligations. If the Clearing House is unable to satisfy a settlement variation payment obligation from such assets, the deficiency shall be a Loss that the Clearing House shall satisfy pursuant to the procedures set forth in this Chapter 21. Any excess margin, if applicable, and settlement variation pays gain to the Defaulting Clearing Member during subsequent clearing cycles shall be added to the available funds, and the Clearing House shall apply such collateral to the Defaulting Clearing Member's payment obligations. For the avoidance of doubt, the Clearing House shall not use customer funds and margins to satisfy a payment obligation to the Clearing House in respect of the Defaulting Clearing Member's proprietary account.

#### **2109.05.2113.00. SECURITY DEPOSITS COLLATERAL TO BE RESTORED.**

In the event it shall become necessary ~~as provided above~~ to apply all or part of the a Clearing Member's security deposits or margins and performance bonds to meet obligations ~~to~~ of MGEX pursuant to MGEX Rules, the Clearing Member shall immediately make good any such deficiency in security deposits or margins and performance bonds, by wire or other acceptable method, within two (2) hours of notice of any deficiency being delivered to Clearing Members ~~by established deadlines for current end of day variation cycle or sooner as may be required by the Exchange.~~ If a Clearing Member pays such assessment by wire and the wire transfer service is not open or operational at the time notice is sent, payment is due within one (1) hour on the next business day that the wire transfer service is open and operational. In the event of the insolvency or default of a depository or settlement bank, Clearing Members shall comply with any further instructions provided by MGEX regarding the restoration of such security deposits collateral.

**2110.00.2106.05. SATISFACTION OF CLEARING HOUSE OBLIGATIONS CLEARING MEMBERS: ASSESSMENTS.**

Losses (as defined in Rule 2109.03.) shall first be satisfied by applying the funds in the order of priority listed in ~~Regulation 2106.02~~Rule 2109.03. The balance of any Losses remaining after the application of such funds shall be assessed against all Clearing Members (excluding any Insolvent or Defaulting Clearing Members). Each Clearing Member (excluding any Insolvent or Defaulting Clearing Member) shall be subject to an assessment in direct proportion to the Clearing Members' total security deposit requirement up to an amount that does not exceed (i) a total of three (3) times such Clearing Member's total security deposit requirement at the time of the default with respect to Losses that are attributed to the default of a single Clearing Member and (ii) a total of six (6) times such Clearing Member's total security deposit requirement at the time of the default with respect to Losses that are attributed to the default of multiple Clearing Members during a Cooling Off Period (as defined in Rule 2113.00. below). Non-defaulting Clearing Members shall take no actions, including but not limited to, attempting to obtain a court order that would interfere with the ability of the Clearing House to collect and apply such assessments.

Each Clearing Member shall pay any assessment made pursuant to this ~~Regulation~~Rule by wire or other method acceptable to MGEX within two (2) hours of the~~on the same business day as~~ notice of the assessment ~~has been~~being delivered to Clearing Members. If a Clearing Member pays such assessment by wire and the wire transfer service is not open or operational at the time notice is sent, payment is due within one (1) hour on the next business day that the wire transfer service is open and operational. Any Clearing Member that does not satisfy an assessment shall be in default, and any Loss that occurs as a result of such default shall itself be assessed by MGEX to non-defaulting Clearing Members. In the event that the amount of assessments received exceeds the amount of the Loss, the Clearing House will return such excess funds as soon as practicable.

If a Clearing Member has made payments of all assessed amounts and has replenished any deficiency in its security deposits or margin and performance bonds in accordance with ~~Regulation~~Rule 2109.05~~2113.00.~~, it may withdraw from Membership by giving written notice to and receiving approval from the Exchange.

**2110.01.2112.00. MEMBERSHIPS: SPECIAL ASSESSMENTS AND ISSUANCE.**

Notwithstanding the provisions of ~~Rule~~Bylaw 221.01., in the event the Exchange requires additional funds to address any uncovered credit loss, liquidity shortfall, or capital inadequacy, MGEX may levy a special assessment against each ~~and every~~ Membership ~~and may fix the dates upon which such assessments, in whole or in parts thereof, shall become due and payable,~~ provided that such special assessments, collectively, may not exceed five million dollars (\$5,000,000). Each Member shall pay any special assessment made pursuant to this Rule by wire or other method acceptable to MGEX within two (2) business days of the notice of the special assessment being delivered to Members. In the event that the amount of special assessments received exceeds the amount of the uncovered credit loss, liquidity shortfall, or capital inadequacy, the Clearing House will return such excess funds as soon as practicable.

In addition, and notwithstanding the provisions of ~~Rule~~Bylaw 360.00., in the event the Exchange requires additional funds to address any uncovered credit loss, liquidity shortfall, or capital inadequacy, the Exchange officers shall have the right to sell original Memberships. The sale price shall be determined by the Exchange officers and shall be within the current bid and offer

range for memberships, provided that the officers consider such price to be reasonable. The person to whom such Membership is to be issued must comply with all the terms and conditions of MGEX Rules and Bylaws and Regulations concerning admission to Membership and recording the ownership of a Membership. Pursuant to Rule Bylaw 360.00., the number of outstanding Memberships shall not exceed six hundred (600) unless an increase is approved by a vote of the Record Owners.

#### 2111.00. VOLUNTARY CONTRIBUTIONS.

At any time following a Default that causes a Loss (as defined in Rule 2109.03.) or liquidity shortfall, the Exchange may seek voluntary contributions from Clearing Members and Market Participants. The Exchange may specify acceptable methods of making a voluntary contribution to the Clearing House. Any contributions made by a Clearing Member to the Clearing House will not relieve such Clearing Member of their obligations under any other MGEX Rules.

#### ~~2107.00. LIMITED RECOURSE AND TERMINATION EVENTS~~ 2112.00. HAIRCUT SETTLEMENT CYCLES.

~~If one or more Clearing Members Default and the assets available to cover the default, including the funds described in the preceding Rules Regulation 2106.02. and all assessments levied by the Exchange, are insufficient to satisfy the Loss (as defined in Rule 2109.03.) and obligations of the Clearing House as a result of such default, then the Board of Directors may approve of and direct the Clearing House to modify settlement cycles in accordance with this Rule and CFTC regulations, shall discount its obligations as provided in Regulation 2107.01. Persons who have not been paid in full shall have no recourse to any other funds.~~

~~If at any time following a default, one or more of the following events (each, a "Termination Event") occur, MGEX shall comply with the procedures set forth below and in Regulation 2107.01. For purposes of this Regulation, a Termination Event shall occur when:~~

- ~~A. The Clearing House is unable to cover a settlement variation payment obligation when due and has no expectation of accessing funds to permit it to cover such payment obligation;~~
- ~~B. The Clearing House determines that the available funds will be insufficient to satisfy all Losses;~~
- ~~C. MGEX is unable to comply with an obligation to pay money or deliver property to a Clearing Member that is properly due and owing in connection with a transaction cleared by the Exchange for a period of five (5) Business Days; or~~
- ~~D. MGEX institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy.~~

~~Following a Termination Event, the Clearing House shall, as soon as reasonably practicable and in a manner consistent with the Commodity Exchange Act and the regulations adopted thereunder (including, without limitation Part 190 of the Regulations, if applicable), fix a U.S. dollar amount to be paid to or received from the Clearing House in respect of all contracts to be terminated by conducting a Haircut Settlement Cycle (as defined below) to determine a final settlement price for all open contracts as described in Regulation 2107.01.~~

#### ~~2107.01. HAIRCUT SETTLEMENT CYCLES AND TERMINATION OF CONTRACTS.~~

~~If a Termination Event occurs, Following Board approval,~~ the Clearing House shall issue a notice~~notify the non-defaulted Clearing Members~~ and conduct a settlement cycle for all MGEX contracts to determine settlement prices for all contracts and the net portfolio gain or loss for each house and customer portfolio~~non-defaulted Clearing Member and its customers as follows (such settlement cycle, a "Haircut Settlement Cycle"):~~

- A. The net portfolio gain of a ~~non-defaulted~~ Clearing Member (a "collect"), or the net portfolio loss of a ~~non-defaulted~~ Clearing Member to the Clearing House (a "pay"), shall be determined separately for (i) its proprietary positions in MGEX contracts (a "Proprietary Collect" or a "Proprietary Pay"), and (ii) the net positions of its customers in MGEX contracts (collectively, a "Customer Collect" or a "Customer Pay").
- B. The Clearing House shall determine and calculate the sum of (i) the amount of each non-defaulted Clearing Member's remaining payment obligations, if any, with respect to assessments levied by MGEX; (ii) any other remaining available funds or collateral; (iii) all Proprietary Pays to be received by MGEX; and (iv) ~~and~~ all Customer Pays to be received by MGEX, and deduct the amount of any uncovered Loss (the resulting amount, the "Aggregate Available Funds").
- C. The Clearing House shall then notify each Clearing Member of the amount of its remaining assessments (if any), Proprietary Pay, and Customer Pay, and each Clearing Member shall pay all such amounts no later than the time required for the relevant settlement cycle~~specified by the Clearing House in such notice~~. If a Clearing Member does not make such payment to the Clearing House, such Clearing Member will be in default and the Exchange may take any of the actions specified elsewhere in the MGEX Rules book with respect to such Clearing Member and its customers.
- D. If the amount of Aggregate Available Funds received by the Clearing House exceeds the sum of all Proprietary Collects and Customer Collects, the Clearing House shall ~~use the excess amount to~~ calculate reimbursements of, and distribute, the excess funds to Clearing Members in the reverse order funds were ~~Clearing Member assessments~~ previously paid to the Exchange, provided the Loss (as defined in Rule 2109.03.) has been fully addressed. Such reimbursements will be distributed pro rata to Clearing Members. The Clearing House may also determine a maximum amount to pay back for closed positions that may be included in the aggregate collects, based upon existing facts and circumstances that it deems appropriate to mitigate further disruptions to the markets.
- E. If the sum of all Proprietary Collects and Customer Collects exceeds the amount of Aggregate Available Funds received, including any voluntary contributions received, then the following procedures will apply:
  1. The Clearing House shall haircut the amount of each Proprietary Collect and Customer Collect on a pro rata basis for the current, and each successive, settlement cycle for the next two (2) Business Days, unless a Bankruptcy Event (as defined in Rule 2121.00.) has occurred, to equal ~~based on~~ the amount of Aggregate Available Funds received relative to the

Proprietary Collect and Customer Collect (such process, a “Variation Margin Gains Haircut”). The Clearing House will haircut Customer Collects at the customer account level of each Clearing Member, and each Clearing Member will allocate such haircut pro rata among its customers with net portfolio gains for the relevant settlement cycle.

2. After considering the existing facts and circumstances and the interests of MGEX’s Clearing Members and customers, the Risk Management Committee, in consultation with MGEX’s Risk Team, may instruct the Clearing House to extend or reduce the number of days during which Variation Margin Gains Haircuts are applied by one or two Business Days. In no event may the Clearing House conduct Variation Margin Gains Haircuts for longer than five (5) Business Days.
3. Absent a Bankruptcy Event, for each settlement cycle conducted in accordance with these procedures~~F. For non-defaulted Clearing Members, the Clearing House shall pay (i) the Proprietary Collect or the haircutted amount of such Proprietary Collects and, as applicable, and (ii) the Customer Collect or the haircut amount of such Customer Collects, as applicable,~~ as soon as practicable after receipt of the Aggregate Available Funds.

~~G. The Clearing Member shall allocate any haircut amount of Customer Collects pro rata among the Clearing Member’s customers.~~

4. If a Bankruptcy Event occurs following a Clearing Member Default on a day during which Variation Margin Gains Haircuts are applied to settlement cycles, then on such day, the Clearing House will conduct a final settlement cycle which will also be subject to a Variation Margin Gains Haircut. The price determined in accordance with such settlement cycle will be used as the price for close-out netting in MGEX Rule 2121.00.

#### 2113.00~~2109.00~~. **COOLING OFF PERIOD AND MULTIPLE DEFAULTS.**

The provisions set forth in this Chapter~~Regulations 2106.00 through 2108.00~~ apply with respect to each default by a Clearing Member. If more than one Clearing Member Default occurs at a time or in close sequence, including a default that occurs by reason of a Clearing Member’s failure to satisfy an assessment demand, the Clearing House shall manage the defaults separately. Upon any default, during the Cooling Off Period, non-defaulted Clearing Members shall be subject to a maximum obligation ~~during the Cooling Off Period~~ to pay assessments as set forth in ~~Regulation~~Rule 2110.00.06.05, and the maximum obligation of all Members shall be restricted to the special assessment limit set forth in Rule 2110.01. ~~These~~is maximums shall apply from the date of the original default until the later of (i) the fifth Business Day thereafter and (ii) if another Clearing Member defaults during the five (5) Business Days following the initial or any subsequent default, the fifth Business Day following the last such default (such period, the “Cooling Off Period”), regardless of the number of defaults that occur during such Cooling Off Period.

The aggregate maximum contribution that may be required pursuant to Rule 2110.00 for the Cooling Off Period shall be based upon each Clearing Member’s total security deposit



requirement in effect at the commencement of the Cooling Off Period. The maximum does not limit Clearing Members' obligations to restore their security deposit contributions or margins and performance bonds as set forth in ~~Regulation~~ Rule 2109.05~~2113.00~~. Following a Cooling Off Period, the Clearing House shall notify each Clearing Member of its security deposit obligation and its assessment exposure.

#### **2114.00. PARTIAL TEAR-UPS.**

At any time following a Clearing Member Default or other Loss (as defined in Rule 2109.03.), the Clearing House may issue notice to Clearing Members and Market Participants providing an opportunity for them to voluntarily agree to have one or more proprietary contracts or, with a customer's consent, to agree to have one or more of each of such customer's contracts that are opposite the remaining open positions of the Defaulted Clearing Member, extinguished by the Clearing House. In addition, the Exchange may elect to tear-up defaulted positions within a Defaulted Clearing Member's portfolio.

At any time following a Clearing Member Default or other Loss (as defined in Rule 2109.03.), the Risk Management Committee may instruct the Clearing House to extinguish a portion of the remaining open positions of the Defaulted Clearing Member through a partial tear-up of proprietary and customer positions of non-defaulted Clearing Members and non-defaulted customers of the Defaulted Clearing Member. A partial tear-up may include, but is not limited to, a line-by-line tear-up against the remaining open positions of the Defaulted Clearing Member. In such event, the Risk Management Committee will determine the appropriate scope of each partial tear-up in accordance with the following procedures. The Risk Management Committee will first determine whether a partial tear-up is appropriate or whether the Exchange should instead move immediately to a full termination of all contracts, taking into consideration any recommendation by the Board of Directors. Such determination, and any recommendation, will (i) be based upon then existing facts and circumstances; (ii) support the integrity of the Clearing House and the stability of the financial system; (iii) take into consideration the interests of Clearing Members and Market Participants; and (iv) aim to extinguish the Defaulted Clearing Member's open proprietary and customer positions and any additional positions deemed necessary to mitigate further disruptions to the markets affected by the remaining open positions of the Defaulted Clearing Member.

If any proprietary or customer positions of a Defaulted Clearing Member remain open following the last Variation Margin Gains Haircut settlement cycle, then the Clearing House will conduct a partial tear-up process of proprietary and customer positions of non-defaulted Clearing Members and non-defaulted customers of the Defaulted Clearing Member, provided that the Risk Management Committee determine the appropriate scope of the tear-up in accordance with the considerations set forth above and any recommendations by the Board of Directors. A partial tear-up may include, but is not limited to, a line-by-line tear-up against the remaining open positions of the Defaulted Clearing Member. In this situation, the Clearing House would proportionately extinguish contracts held by non-defaulted Clearing Members, their non-defaulted customers, and the non-defaulted customers of the Defaulted Clearing Member that are opposite the Defaulted Clearing Member's remaining open positions relative to the size of such remaining open positions.

#### **2115.00. TERMINATION OF CONTRACTS.**

In the event that the Board of Directors mandates a full tear-up of contracts or if, after taking any or all of the measures allowed in this Chapter to address a Clearing Member Default or Insolvency,

the Clearing House determines that it still will not be able to satisfy all Losses (as defined in Rule 2109.03.) or cover a settlement variation payment obligation when due (without expectation of accessing funds that would permit it to cover such payment obligation), then the Clearing House will terminate all contracts in accordance with these procedures. As soon as reasonably practicable and in a manner consistent with the Commodity Exchange Act and the regulations adopted thereunder (including, without limitation Part 190 of the Regulations, if applicable), the Exchange will fix a U.S. dollar amount to be paid to or received from the Clearing House in respect of all contracts to be terminated by conducting a haircut settlement cycle (as described in Rule 2112.00.) to determine a final settlement price for all open contracts.

Upon the completion of payments, all MGEX contracts shall be extinguished, and the Clearing House shall have no further access to funds or collateral with respect to such contracts or clearing activity of a non-Defaulting Clearing Member. Clearing Members, their affiliates, and their customers shall have no claim against the Exchange with respect to losses suffered as a result of the application of MGEX Rules ~~and Regulations~~, nor shall any beneficial holder of an MGEX contract have any claim against its non-defaulting Clearing Member.

#### 2116.00.2108.00. DETAILS OF IMPLEMENTATION AND AUCTIONS.

While adherence to the provisions of the above MGEX ~~Regulations~~ Rules is mandatory, the detailed implementation of the process of finalizing Losses with respect to a default, including the liquidation, auction, tear-up, or sale of positions or assets of the Defaulting Clearing Member, shall be conducted by the Clearing House or the MGEX Risk Team. A Loss includes, but is not limited to, any amounts associated with the liquidation, transfer, and other costs related to managing the Default of a Clearing Member. In order to ensure that the process for liquidating open contracts results in competitive pricing, to the extent feasible under market conditions at the time of liquidation, liquidation of open contracts held for a house account or customer account of a Defaulting Clearing Member may occur by one or more of the following methods: (i) book entry that offsets open contracts on the books of the Defaulting Clearing Member; (ii) liquidation in the open market; and/or (iii) one or more private auctions amongst qualified market participants invited by the Clearing House to submit confidential bids. The Clearing House shall have discretion to select the best bid submitted for any portfolio in an auction, based on the totality of the circumstances, and no bid shall be binding upon MGEX unless accepted by it.

In the event that identical customer contracts are liquidated in the open market on the same date but cannot be liquidated at the same price, unless the Clearing House determines that it would be inappropriate, a weighted average of the liquidation prices for such contracts shall be used in determining the value of the liquidated contracts for each such customer. In the event that open contracts of multiple customers are liquidated in a bulk auction, the net proceeds of such auction shall be allocated on a pro rata basis amongst the affected customers based upon their applicable performance bond requirements for the clearing cycle immediately prior to the default.

#### 21174.00. USE OF CUSTOMER GROSS MARGIN FILES.

Unless otherwise expressly agreed to by the Exchange, in the event of a Clearing Member or customer default, insolvency, or other financial emergency, the Exchange shall use and rely upon the customer gross margin files reported daily by Clearing Members to determine the amount of a customer's pledged margin, associated with open positions, held at the Clearing House. The Exchange shall not be held liable to any party for its reliance upon and use of the customer gross margin files reported to MGEX.

### 2118.00.~~2110.00.~~ **NO ACTION; LIMITATION OF LIABILITY.**

Non-defaulting Clearing Members shall take no actions, including but not limited to, attempting to obtain a court order that would interfere with the ability of the Clearing House to collect and apply assets and proceeds in accordance with any MGEX ~~Regulations~~Rules.

The liability of the Exchange shall be limited to losses resulting from the substitution of the Clearing House upon contracts between Clearing Members. The Exchange shall not be liable for any other obligations, including but not limited to, obligations of a non-Clearing Member, obligations of a Member, obligations of a Clearing Member to a ~~Market Participant~~non-Member, obligations of a Clearing Member to another Member of the Clearing House who is acting for him as broker, or obligations to a customer by a Clearing Member; nor shall the Exchange become liable to make deliveries to or accept deliveries from a customer of its Clearing Members.

### 2119.00. RECOVERY OF LOSS.

If the Exchange later recovers any amounts accessed or contributed to cover a Loss (as defined in Rule 2109.03.) ~~for which Clearing Members' security deposits or other assets have been accessed by MGEX is afterward recovered by the Exchange, in whole or in part,~~ the net amount of such recovery shall be credited to ~~such persons or firms~~ non-defaulted Clearing Members (whether or not they are Clearing Members at the time of recovery) and Market Participants, as applicable, in ~~proportion to the amount of the security deposit or assets accessed by MGEX,~~ the following order on a pro rata basis based on: (i) the amount of such Clearing Members and Market Participants' voluntary contributions made pursuant to Rule 2111.00.; (ii) the amount of such Clearing Members' (and their customers' if applicable) aggregate Variation Margin Gains Haircuts made pursuant to Rule 2112.00.; (iii) the amount of such Clearing Members' assessments utilized by the Exchange pursuant to Rule 2110.00.; and (iv) the amount of such Clearing Members' security deposits utilized by the Exchange pursuant to Rule 2109.03. Any remaining amount may be credited to the Exchange for the amount of the MGEX Clearing House reserve fund utilized with respect to the default.

### 2120.00.~~2107.02.~~ **LIMITED RECOURSE AND NON-PETITION.**

If a Bankruptcy Event occurs (as defined in Rule 2121.00.), Clearing Members and Market Participants will have no recourse to any other funds or any other entity, including without limitation the Exchange and its Clearing House or any of its directors, officers, or employees. Notwithstanding the foregoing, Clearing Members, for both their proprietary positions and their customers' positions, and non-defaulted customers of Defaulted Clearing Members may have a claim on any recovery from the Defaulted Clearing Member in the amount of the aggregate Variation Margin Gains Haircuts applied to such positions. If recovery from the Defaulted Clearing Member is less than the aggregate Variation Margin Gains Haircuts applied, non-defaulted Clearing Members and their customers and the non-defaulted customers of the Defaulted Clearing Member will share pro rata in any recovery.

No Clearing Member and no customer of a Clearing Member shall institute against, or join any other person in instituting against, the Exchange any bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or examinership proceedings, or other similar proceedings under U.S. federal or state bankruptcy laws or other applicable law arising out of any claimed default by the Clearing House on an MGEX contract as a result of the termination of such contract and related payments in accordance with these ~~Rules~~Regulations.

~~2121.00.2111.00.~~ **CLOSE-OUT NETTING AND OFFSET.**

If at any time the Exchange (i) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition presented against it, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for the Exchange's winding-up or liquidation, or (ii) approves resolutions authorizing any proceeding or petition described in clause (i) above (collectively, a "Bankruptcy Event"), all open positions in the Clearing House shall be closed promptly.

If at any time the Exchange fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member that is due and owing in connection with a transaction cleared by the Exchange, for a period of five (5) Business Days from the date that the Exchange receives notice from the Clearing Member of the past due obligation, the Clearing Member's open proprietary and customer positions at the Clearing House shall, at the election of that Clearing Member, be closed promptly. For the avoidance of doubt, in the event the Clearing House conducts any Variation Margin Gains Haircut settlement cycles, such haircutted funds will not constitute an undisputed Exchange obligation under this Rule, and MGEX will have no obligation to repay such amounts other than as provided for in Rule 2119.00.

At such time as a Clearing Member's positions are closed:

- A. The obligations of the Clearing House to such Clearing Member with respect to the Clearing Member's proprietary positions, accounts, collateral, and security deposits shall be netted against the obligations of such Clearing Member to the Clearing House and to the Exchange in respect of its proprietary positions, accounts, collateral, guarantees of the performance of its customers, and any obligations to guarantee funds ("Proprietary Netting"); and
- B. The obligations of the Clearing House to the Clearing Member with respect to such Clearing Member's customers' futures positions, futures accounts, and futures collateral shall be netted against the obligations of the Clearing Member to the Clearing House with respect to the futures positions, futures accounts, and futures collateral of such customers ("Futures Customer Netting").

Notwithstanding the foregoing, the amount of any proprietary or customer claim extinguished as a result of applying the terminating and netting procedures set forth in this Chapter 21 will not be available for netting in Proprietary Netting and Futures Customer Netting. Proprietary Netting and Futures Customer Netting shall be performed in accordance with the Bankruptcy Code and the Commodity Exchange Act and the regulations promulgated thereunder. This ~~Regulation~~-Rule shall be deemed to be a master netting agreement for Proprietary Netting and a master netting agreement for Futures Customer Netting.

~~After a Bankruptcy Event occurs, the authority of the Clearing House, pursuant to Regulation 2106.05., to make new assessments or require a Clearing Member to cure a deficiency in its security deposit, arising after the Bankruptcy Event, shall terminate.~~

All positions open immediately before being closed in accordance with this ~~Regulation~~-Rule shall be valued in accordance with the following procedures.

As promptly as reasonably practicable, but in any event within thirty days of the (i) Bankruptcy Event, or (ii) if a Clearing Member elects to have its open positions closed ~~in a default~~ as described above, the date of the election, the Exchange shall, in a manner that is consistent with the requirements of the Commodity Exchange Act and the regulations adopted thereunder (including, without limitation Part 190 of the Regulations), fix a U.S. dollar amount (the "Close-out Value") to be paid to or received from the Exchange by each Clearing Member, after taking into account all applicable netting and offsetting pursuant to the provisions of this ~~Regulation~~Rule.

The Exchange shall value open positions subject to close-out by using the market prices at the moment that the positions were closed-out, assuming the markets were operating normally at such moment. If the markets were not operating normally at such moment, the Exchange shall exercise its discretion, acting in good faith and in a commercially reasonable manner, in adopting methods of valuation to produce reasonably accurate substitutes for the values that would have been obtained from the market if it had been operating normally at the moment that the positions were closed-out.

In determining a Close-out Value, the Exchange may consider any information that it deems relevant. If a Clearing Member has a negative Close-out Value, it shall promptly pay that amount to the Exchange.