



July 12, 2017

Via CFTC Portal Submissions

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

**RE: Rule Certification: Nadex Removes Market Maker Non Post-Only Order Entry - Submission Pursuant to Commission Regulation §40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission (the “Commission”) under the Act, North American Derivatives Exchange, Inc. (“Nadex”) hereby submits to the Commission its intent to make amendments to its Rule 4.4 (Obligations of Market Makers), 5.10 (Acceptable Orders), the Fee Schedule, and the Market Maker Agreement. Nadex plans to implement these changes for the open of business on trade date July 26, 2017.

The concept of “Post-Only Quotes”, including a “Post-Only Reject Quote” and “Post-Only Price Adjustment Quote”, was first self-certified in June 2011. A Post-Only Quote is a quote submitted by a Market Maker, which has the potential to become a Limit Order if matched for trade execution, and which cannot be executed opposite another Post-Only Quote. At that time these quotes were introduced, the Nadex platform was operating with only one Market Maker, Nadex’s affiliate Market Risk Management, Inc., who provided quotes in all products. The Post-Only Quote was created in anticipation of additional Market Makers joining the Exchange and designed to encourage the posting of liquidity, rather than taking liquidity from a market. Market Makers were not originally prohibited from submitting Non Post-Only Orders, that is, any order type that is not a Post-Only Quote, and in March 2013 Nadex clarified that its Market Makers *were* allowed to submit Non Post-Only Orders, provided the Market Maker continued to meet the obligations set forth in the Market Maker Agreement. Non Post-Only Orders do have the potential to trade opposite another Market Maker’s Post-Only Quote. Nadex now intends to make amendments to its Rulebook, Market Maker Agreement, and Fee Schedule to prohibit Market Makers from submitting Non Post-Only Orders to the Exchange.

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As Nadex continues to advance its markets and improve its Member experience, it anticipates the addition of new Market Makers. With the presence of multiple Market Makers on the market, the likelihood that a Non Post-Only Order submitted by a Market Maker is matched opposite another Market Maker's Post-Only Quote increases, thereby decreasing the opportunity for Nadex's Member participants to execute orders on the Exchange. Moreover, requiring Market Makers to submit only Post-Only Quotes prevents a Market Maker from limiting another Market Maker's access to the market and trading opportunities by immediately executing orders opposite the other's quotes. Furthermore, due to the Market Makers' capital requirements, they typically have a greater possibility of engaging in excessive trading opposite each other, and creating misleading signals to the marketplace with respect to the amount and nature of the trading activity on the Exchange. Therefore, in order to provide the best experience for its Members, requiring its Market Makers to submit only Post-Only Quotes facilitates the Market Makers' focus on its primary purpose – to provide liquidity to the Nadex markets.

In order to enable Market Makers to manage large open positions, Markets Makers will continue to be relieved of their quoting obligations when it has acquired a position size equal to or greater than 90% of any applicable position limit in a particular Class or Contract, until the position has been reduced to 75% of the applicable position limit in accordance with Rule 4.4(b)(iv).

Nadex is making an additional amendment to its Market Maker Agreement to require Market Makers to make a good faith effort to quote all Designated Classes to which it is assigned in Appendix A of the Market Maker Agreement in the Demo environment. Market Makers would not be held to the size or spread requirements applicable to the live Production environment.

All Market Makers and potential Market Makers have been notified of the changes and will execute new Market Maker Agreements reflecting the changes.

### **DCM Core Principles**

Nadex has identified the following Designated Contract Market ("DCM") Core Principles as potentially being impacted by the amendments discussed herein: Core Principle 9 Execution of Transactions, Core Principle 12 Protection of Markets and Market Participants, Core Principle 7 Availability of General Information.

Core Principle 9 (Execution of Transactions) and Core Principle 12 (Protection of Markets and Market Participants), implemented by Commission Regulations 38.500 and 38.651, respectively, require the DCM to provide a competitive, open, and efficient market for executing transactions that protects the price discovery process and to establish and enforce rules to protect the markets and market participants from abusive practices and to promote fair and equitable trading on the contract market. Requiring Market Makers to submit only Post-Only Quotes to the market provides a competitive, open, and efficient market and promotes fair trading on the Exchange for all market participants by creating greater liquidity, preventing excessive trading between Market Makers which has the potential to mislead the market, as well as limiting trading opportunities for other Market Makers. Market Makers will continue to be relieved of their quoting obligations to manage their risk in certain situations. Accordingly, the amendments discussed herein will not negatively impact Nadex's ability to comply with this Core Principle.

Core Principle 7 (Availability of General Information), implemented by Regulation 38.401, requires the DCM make available to the public its Rulebook and to ensure that the Rulebook is complete and accurate. Nadex currently makes its Rulebook, Fee Schedule, and Market Maker Agreement

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available to the public on its website and will continue to do so after the amendments discussed herein are implemented. Accordingly, these amendments will not negatively affect Nadex's ability to comply with this Core Principle.

### **DCO Core Principles**

No Derivatives Clearing Organization Core Principles have been identified as potentially being affected by the amendments discussed herein.

These Rule changes have been outlined in Exhibit A. The amendments to the Rulebook are set forth in Exhibit B, amendments to the Fee Schedule are set forth in Exhibit C, and amendments to the Market Maker Agreement are in Exhibit D. Any deletions are stricken out while the amendments and/or additions are underlined.

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 amendments was posted on its website at the time of this filing.

In accordance with the 10-day review period set forth in Commission Regulation 40.6(b), Nadex plans to implement these Rule changes for the start of business on trade date July 26, 2017.

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](mailto:jaime.walsh@nadex.com).

Sincerely,



Jaime M. Walsh  
Legal Counsel

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**EXHIBIT A**

<b>Rule</b>	<b>Asset</b>	<b>Duration/Close Time</b>	<b>Action</b>	<b>Effective Date</b>
4.4	Obligations of Market Makers	N/A	Note all Market Maker submission must be Post-Only Quotes.	7/26/2017
5.10	Acceptable Orders	N/A	Remove reference to Market Maker non Post-Only Order submission.	7/26/2017
	Fee Schedule	N/A	Remove reference to Market Maker non Post-Only Order submission.	7/26/2017
	Market Maker Agreement	N/A	Note all Market Maker submission must be Post-Only Quotes; must make good faith effort to price Demo.	7/26/2017

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## **EXHIBIT B**

### Amendment of Rules 4.4, 5.10

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

RULES 1.1 – 4.3 [UNCHANGED]

#### RULE 4.4 OBLIGATIONS OF MARKET MAKERS

(a) General – Transactions of Market Makers should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers shall not make bids or offers or enter into transactions that are inconsistent with such a course of dealings. Ordinarily, Market Makers shall be obligated to do the following:

- (i) trade for the proprietary account of the Market Maker only;
- (ii) maintain at least the minimum capital on deposit with Nadex in accordance with the terms of the applicable Market Maker Agreement;
- (iii) comply with all other terms of the applicable Market Maker Agreement; and
- (iv) maintain two-sided displayed quotes, insofar as required by the Market Maker Agreement, of a minimum designated quantity (“Size”) within a predefined spread (“Bid/Ask Spread”) for a Series of Contracts for a certain period of time throughout the trading day, and comply with all other terms of the applicable Market Maker Agreement.

(1) In ordinary market conditions, quotes must be made within a maximum Bid/Ask Spread.

(2) The Market Maker Agreement sets forth specific conditions under which a Market Maker is permitted to refrain from quoting binding bid and offer prices.

(b) A Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for the account of the Market Maker when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity or a temporary disparity between the supply of and demand for quotations in a Series of a Designated Class to which the Market Maker is appointed. Without limiting the foregoing, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market;

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(i) To post bid and ask quotations in all Designated Classes to which the Market Maker is appointed that, absent changed market conditions, will be honored by the Market Maker.

(ii) To update quotations in response to changed market conditions in all Designated Classes to which the Market Maker is appointed.

~~(iii) All Market Maker quotations in the Designated Classes to which the Market Maker is appointed shall be submitted as "Post-Only Quotes". A Market Maker is not permitted to submit Non Post-Only Orders. A Market Maker may submit Non-Post-Only Orders in markets to which the Market Maker has not been appointed and, provided the Market Maker continues to meet its obligations to continuously quote a two-sided market under the Market Maker Agreement and these Rules, in the Designated Classes to which the Market Maker is appointed.~~

(iv) In the event a Market Maker has built a position size equal to or greater than 90% of any applicable position limit in a particular Class or Contract, Market Maker is temporarily relieved of its quoting obligation for such Class or Contract until Market Maker's position in such Class or Contract has been reduced to 75% of the applicable position limit, at which time quoting obligations as set forth in the Market Maker Agreement will resume.

(c) Like other Members of Nadex, a Market Maker may not attempt to execute a trade ~~place an order to buy or sell a Contract in a Class~~ unless it has the excess funds in its Nadex account necessary to fully collateralize fulfill its obligations of the trade. ~~under that order.~~

(d) Alternative Position Limits for Certain Binary Contracts

(i) Approved market makers who are engaged in bona fide market-making activity shall be exempt from the position limits for those Binary Contracts defined in

(1) Rules 12.55 (Japan 225), 12.57 (China 50), 12.65 (Wall Street 30), 12.63 (US Tech 100), 12.59 (US 500) and 12.61 (US SmallCap 2000) of these Rules. Instead, such market makers shall be subject to Alternative Position Limits of twice the limit identified for such Binary Contract in Chapter 12. In addition, such Alternative Position Limits shall apply not to the entire class of Binary Contracts, but to each Binary Contract in that Class (i.e., per strike).

(2) Rules 12.3 (Copper), 12.5 (Gold), 12.7 (Silver), 12.9 (Crude Oil), 12.11 (Natural Gas), 12.49 (FTSE 100) and 12.51 (Germany 30) of these Rules. Instead, such market makers shall be subject to Alternative Position Limits of the limit identified for such Binary Contract in Chapter 12, which limit shall apply not to the entire class of Binary Contracts, but to each Binary Contract in that Class (i.e., per strike).

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(ii) A market maker taking advantage of this exemption and an Alternative Position Limit must, within 1 business day following a request by Nadex's Compliance Department, provide the Nadex Compliance Department with a trade register detailing all futures trading activity in any account owned or controlled by the market maker in the futures contract underlying a Binary Contract during the 15 minutes immediately before and after any expiration time identified by Nadex's Compliance Department in the request.

(e) Duly appointed Market Makers may be charged a Wide Spread Surcharge as set forth in the fee schedule.

#### RULE 5.1 – 5.9 [UNCHANGED]

#### RULE 5.10 ACCEPTABLE ORDERS

(a) A Member who is not a Market Maker may enter only Non-Post Only Orders (that is, any acceptable Order other than a Post-Only Quote as set forth in the definition of "Order" in Section 1.1 of this Rulebook) to trade Contracts on the Market.

(b) Duly appointed Market Makers who are making markets pursuant to such appointment shall submit market maker quotations as Post-Only Quotes. "Post-Only Quotes" are quotes that provide liquidity to a market in that they can be matched opposite any Non Post-Only Order submitted by a Member, but cannot be matched opposite another Post-Only Quote submitted by another Market Maker. For example, like a Good 'Til Cancel Order, a Post-Only Quote is an offer to buy or sell the number of Contracts specified at the price specified, or a better price if a better price is available. However, unlike a Good 'Til Cancel Order, Post-Only Quotes will not be matched opposite another Post-Only Quote. Post-Only Quotes can be submitted in one of two forms: Post-Only (Reject) and Post-Only (Price Adjustment) Quotes, as those terms are defined in Section 1.1.

~~(c) In addition to the quotations described in subparagraph (b) above, duly appointed Market Makers may submit Non Post Only Orders. Such Orders will be charged trading and settlement fees at the applicable Direct Trading Member API rates as set forth in the fee schedule.~~

#### RULE 5.11 – 12.78 [UNCHANGED]

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# EXHIBIT C

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## NADEX FEE SCHEDULE

### DIRECT TRADING MEMBERS

#### Membership Fee:

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

#### Initial Deposit:

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

#### Transaction Fees:

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

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

- \$1.00 for each lot traded from 1 up to and including 50 lots;
- An additional \$0.00 for each lot over 50 lots.

#### Settlement Fees:

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

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

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

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

### FCM MEMBERS

#### Membership Fee:

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

#### Minimum Balance:

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

#### Transaction Fees:

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

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

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

#### Settlement Fees:

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

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

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

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

### MARKET MAKERS

#### Membership Fee:

- Nadex does not charge Market Makers a membership fee.

#### Minimum Balance:

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

#### Transaction Fees\*:

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

Nadex charges its non-intermediated Market Makers an Exchange trading fee of \$0.50 per contract per side for each trade executed on Nadex.

#### Settlement Fees\*:

Nadex charges its non-intermediated Market Makers an Exchange settlement fee of \$0.50 per contract per side for each contract that settles in-the-money. If the total fee to be charged for the position exceeds the total settlement payout for that position, Nadex will reduce its fee to the amount of the total settlement payout for that position (that is, Nadex will not charge a settlement fee that exceeds a settlement payout).

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

#### Additional Fees:

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

### SYSTEM PROVIDERS

Nadex is interested in discussing partnership opportunities with systems providers.

Anyone interested in becoming a Nadex FCM Member or ~~mMarket mMaker~~ or pursuing a partnership as a systems provider should contact us.

\* Rates apply to Post-Only orders. Non-Post-Only orders submitted by Market Maker will be charged a \$1.50 trading fee per side for each contract traded, and a \$1.00 settlement fee per side for each contract that settles in-the-money, regardless of whether the orders are submitted via API Connection, platform, or mobile device. Any necessary balance adjustment as the result of executed non-Post-Only orders shall be made on a monthly basis. Any amount owed by Market Maker as the result of the balance adjustment due to executed non-Post-Only orders may be debited from the Market Maker's cash account at Nadex.

# NADEX FEE SCHEDULE CHART:

EFFECTIVE JANUARY 3, 2017

## TRADING FEES

### Direct Member Exchange Trading Fees

Lots Traded	Fees Per Side
Lots 1-50	\$1.00
Lots above 50	\$ 0.00

### FCM Member Exchange Trading Fees

Lots Traded	Fees Per Side
All lots traded	\$0.35

### Market Maker Member Exchange Trading Fees

Lots Traded	Fees Per Side
All lots traded	\$0.50

## SETTLEMENT FEES

### Direct Member Settlement Fees\*

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

### FCM Member Settlement Fees\*

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

### Market Maker Member Settlement Fees\*

Lots Settled in-the-money	Fees Per Side
All lots settled in-the-money	\$0.50

## ADDITIONAL MARKET MAKER FEE

Average per Lot Profit per Month	Wide Spread Surcharge
Over \$2.00	50% above \$2.00

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

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# EXHIBIT D

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# Market Maker Agreement

This Market Maker Agreement ("Agreement") is entered into between North American Derivatives Exchange, Inc., a designated contract market and derivatives clearing organization incorporated in Delaware, with its principle place of business at 311 South Wacker Drive, Suite 2675, Chicago, Illinois 60606 ("Nadex"), and

\_\_\_\_\_, a [corporation/limited liability company] incorporated under the laws of the State of \_\_\_\_\_, with its principle place of business at \_\_\_\_\_, ("Market Maker"), as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"). Capitalized terms not expressly defined in this Agreement shall have the meaning ascribed to them in the Nadex Rules.

## 1 CONTROLLING PROVISIONS; CONDITION PRECEDENT

(a) All of the terms and conditions contained in the Membership application process as well as the Nadex Rules shall regulate all exchange trading activities of a Market Maker unless otherwise provided for in this Agreement, in which case this Agreement shall be controlling.

(b) For avoidance of doubt, Market Maker may not function as a Market Maker under this Agreement unless Market Maker is a Member of Nadex, and notwithstanding any other provision of this Agreement, Market Maker being a Member shall be a condition precedent to the effectiveness of this Agreement.

## 2 MARKET MAKER OBLIGATIONS

(a) Beginning on the Effective Date, the Market Maker shall continuously quote binding bid and offer prices, submitted as Post-Only Quotes as that term is defined in the Nadex Rules, at or inside of the maximum spread ("Defined Spread") at not less than the defined minimum size ("Defined Size") in the listed Contracts of all Classes to which the Market Maker is assigned as set forth on Appendix A Table 1 ("Designated Classes"), as it may be amended from time to time by mutual agreement of the parties, at all times during which the Designated Classes are open for trading, except as otherwise provided in Section 3 of this Agreement. Market Maker shall not submit Non Post-Only Orders as defined by the Nadex Rules.

(b) The Market Maker acknowledges and agrees not to engage in any activity that would violate the Commodity Exchange Act, as amended (the "Act"), and the Commission's regulations adopted thereunder. The Market Maker also understands and agrees that this Agreement may be unilaterally modified or cancelled by Nadex for any reason if directed to do so by the Commodity Futures Trading Commission (the "Commission") in order to comply with the Act and the Commission's regulations adopted thereunder.

(c) Market Maker shall not knowingly employ any Authorized Traders who are subject to statutory disqualification under Section 8a(3) of the Act.

## 3 SUSPENSION AND MODIFICATION OF MARKET MAKER OBLIGATIONS

(a) Market Maker shall not be required to act in accordance with Section 2(a) during the occurrence of any of the following events ("Suspension Events"):

(i) The calculation of the Underlying which is the subject of any Designated Class that has been suspended;

(ii) If there is no direct Underlying market for a Designated Class or no related market or event upon which to base the prices for a Designated Class, then there is a suspension of the trading of such Designated Class;

(iii) There exists in the reasonable opinion of Nadex and/or Market Maker such a change, whether or not foreseeable, in national or international financial, political, or economic conditions as would in Nadex and/or Market Maker's view make it impossible to accurately price Contracts in the Designated Class;

(iv) Where an act of God, war, terrorism, fire, flood, civil disturbance, or act of any governmental authority beyond the control of the Market Maker occurs which prevents the Market Maker from entering bids and offers or prevents Nadex from maintaining an orderly market; or

(v) Where any interruption, defect, withdrawal or failure of power supply, trading systems, network, internet connections, computer systems, communications (whether owned or operated by Market Maker, Nadex or any third party) or other similar force majeure event prevents Market Maker from entering bids and offers or prevents Nadex and/or Market Maker from maintaining an orderly market;

(vi) The Market Maker has a position in any Designated Class or Contract that equals or exceeds 90% of the applicable position limit for such Designated Class or Contract.

(b) The parties will each inform the other by telephone and subsequently by email as soon as practicable after either of them becomes aware that they believe any of the foregoing Suspension Events has occurred, is ongoing, or ceases to exist.

(c) Market Maker shall not be required to act in accordance with Section 2(a) during a Fast Market and shall be permitted, at the discretion of the Market Maker, to refrain from quoting binding bid and offer prices during this period. A Market Maker that chooses to submit binding bid and offer prices during a Fast Market will be required to comply with the Defined Spread and Size as set forth in Appendix A. A Fast Market is defined as:

(i) for any particular Contract, the period just prior to expiry of that Contract, specifically,

(A) the 5 minute period just prior to expiry of any Event Contract;

(B) the 2 minute period just prior to expiry of any Intraday, Daily, or Weekly Contract, with the exception of the Intraday 5-Minute and 20-Minute Contracts;

(C) the 1 minute period just prior to the expiry of any Intraday 5-Minute or Intraday 20-Minute Contract;

(ii) the five (5) minutes prior to the scheduled announcement and the five (5) minutes after the announcement of any major economic indicator;

(iii) any unusual market condition or price volatility which is determined by Nadex, acting reasonably and in consultation with Market Maker, to prevent the maintenance of an orderly market.



**(d)** Nadex may amend the definition of a Fast Market and its applicable Rules unilaterally by providing 15 days' written notice to the Market Maker. To the extent reasonably possible and practicable, Nadex will consult with the Market Maker and other relevant Market Makers prior to amending its Fast Market Rules

**(e)** Market Maker will not be required to price a two-sided market, and will be permitted to reduce its size below the Defined Size (including to 0) ;

**(i)** in any Binary Contract within a Designated Class that is so deep in-the-money as to be valued at \$100 offer or so deep out-of-the-money as to be valued at zero bid, and

**(ii)** in any Variable Payout Contract within a Designated Class when the underlying for that Variable Payout Contract is outside the range of the Variable Payout Contract.

**(iii)** during the first 30 seconds and last 30 seconds of any Intraday 5-Minute Binary Contract.

#### 4 CONFIDENTIALITY

**(a) Confidential Information** means all information, whether written or oral, and in any form (including, without limitation, engineering documents, research and development, manuals, reports, designs, drawings, plans, flowcharts, software (in source or object code), program listings, data file printouts, processes, component part listings and prices, product information, new product plans, sales and marketing plans and/or programs, pricing information, customer lists and other customer information, financial information and employee files or other employee information) relating to the disclosing party's business or technology to receiving party.

**(i)** The term "Confidential Information" also shall be deemed to include: **(a)** all notes, analyses, compilations, studies, interpretations, or other documents prepared by recipient or its representatives that contain, reflect or are based upon in whole or in part, the information furnished by or on behalf of disclosing party to recipient pursuant hereto, and **(b)** Confidential Information disclosed prior to, as of or after the date of this Agreement.

**(ii)** Confidential Information does not include information; **(a)** lawfully received from third parties without confidentiality obligation to the disclosing party; **(b)** in the public domain other than through breach of the obligation of confidentiality imposed by this Agreement; **(c)** independently developed without use of the other party's Confidential Information; or

**(d)** is lawfully known to the recipient without an obligation of confidentiality the time recipient receives the same from the disclosing party, as evidenced by written records.

**(b) Return of Confidential Information.** Promptly upon the written request of the discloser, the recipient shall, and shall cause its representatives to, return to the discloser, or destroy all Confidential Information. If the recipient destroys the Confidential Information, it shall certify that it has done so in writing and promptly deliver that certificate to discloser. Despite the provisions of this Section 4b), the recipient may retain one permanent file copy of the Confidential Information of the discloser and any derivative materials if required to do so under any state or federal law or regulation.

#### **(c) Obligations of Confidentiality.**

**(i)** Each party will: **(a)** use the other's Confidential Information solely to perform its obligations under this Agreement, and disclose the other's Confidential Information only to its agents, contractors, and employees legally bound, in writing, to keep Confidential Information confidential and only to the extent necessary for them to perform this Agreement; **(b)** in no event use less than ordinary care to protect the other's Confidential Information against unauthorized disclosure to any third party; and **(c)** notify the other of unauthorized use, disclosure, theft or other loss of Confidential Information of which it learns;

**(ii)** Confidential Information may be disclosed as required by law, provided that prior to any such disclosure, the recipient will; **(a)** assert the confidential nature of the Confidential Information to the court or agency; **(b)** provide sufficient notice to the disclosing party to permit it to contest the disclosure requirement; and **(c)** cooperate with the disclosing party, at the disclosing party's expense, in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

**(d) Survival.** Despite any other provision of this Agreement, this entire Section 4 Confidentiality survives any termination of this Agreement.

#### 5 FEES

**(a)** The Market Maker will pay a fee of \$\_\_\_\_\_ in order to establish a dedicated line.

**(b)** The Market Maker shall pay transaction-based Exchange Fees to Nadex during the Term of the Agreement. These fees will be set by the fee committee and approved by the Nadex board. "Exchange Fees" are all fees relating to the execution and settlement of transactions on the exchange, including, but not limited to, trading and settlement fees.

#### 6 MINIMUM DEPOSIT AND MAINTENANCE AMOUNT

**(a)** Market Maker is required to have an initial Minimum Deposit of \$500,000 and a Maintenance Amount of \$250,000:

**(b)** In this Section, "Minimum Deposit" means the amount the Market Maker must initially deposit in order to establish an account at Nadex and "Maintenance Amount" means the minimum amount that must be in the Market Maker's account at all times. In the event the Market Maker's available cash balance falls to the Maintenance Amount, the Market Maker must immediately deposit sufficient funds to bring the available cash balance to \$500,000.

**(c)** Market Maker cannot withdraw funds from its Nadex account if, after such withdrawal, its Nadex available cash balance would be less than \$500,000 except on termination of Agreement.



**7 ASSIGNMENT**

Neither this Agreement, nor any of the rights or obligations under this Agreement, may be assigned or transferred by either party without the express prior written consent of the other party.

**8 TERM OF AGREEMENT**

The term of this Agreement shall be for a term of one year ("Initial Term"), as of the Effective Date. This agreement shall be automatically renewed annually after the Initial Term (collectively "Term") unless terminated pursuant to paragraph 9 of this Agreement.

**9 TERMINATION**

(a) This Agreement may be terminated immediately by Nadex in the event that the product in which the Market Maker has contracted to make markets is delisted, the Market Maker makes a material statement which is untrue or made in bad faith, Nadex is so ordered by the Commission, the Market Maker does not satisfy the terms of the Agreement, or the Market Maker breaches a material provision of this Agreement or commits a major offense. Notwithstanding anything to the contrary herein, the sole and exclusive remedy of Nadex for any breach of Market Maker's obligations hereunder shall be to terminate this Agreement.

(b) This Agreement may be terminated by either party for any reason provided the terminating party provides 30 days written notice to the non-terminating party.

(c) This Agreement will terminate if and when the Market Maker's Nadex Membership terminates.

**10 AMENDMENTS**

**Unless otherwise stated in this Agreement, no provision of this Agreement may be amended or modified except by written agreement of both parties.**

**11 WAIVER OF COMPLIANCE**

**Any failure of a party to comply with any obligation herein may be expressly waived in writing by the other party to this agreement, but such waiver or failure to insist upon strict compliance with such obligation shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.**

**12 MANDATORY ARBITRATION**

Any controversy or claim arising out of or in connection with this Agreement or the performance or breach hereof, or relating to designation as a market maker, including any claim against Nadex, the Nadex settlement bank, or any other Nadex Member or Market Maker, shall be settled by arbitration as set forth in the Nadex Rules.

**13 CHOICE OF LAW**

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND ALL DISPUTES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF ILLINOIS AS APPLIED TO CONTRACTS MADE AND TO BE PERFORMED IN ILLINOIS, WITHOUT APPLYING CONFLICT OF LAW RULES.

BY SIGNING THIS AGREEMENT, MARKET MAKER ACCEPTS FULL RESPONSIBILITY FOR HAVING KNOWLEDGE OF AND ADHERING TO ALL RULES AND REGULATIONS GOVERNING NADEX.

**MARKET MAKER**

*Signed for and on behalf of Market Maker:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

**NORTH AMERICAN DERIVATIVES EXCHANGE, INC.**

*Signed for and on behalf of Nadex:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

DESIGNATED CLASSES – THIS APPENDIX A ACCOMPANIES THE NADEX MARKET MAKER AGREEMENT

Member Name: \_\_\_\_\_

Member Username: \_\_\_\_\_

The following is a list of the Designated Classes for which the above named member has requested to be assigned as a Market Maker<sup>1</sup> and the Defined Spread and Defined Size applicable to the Designated Classes in accordance with Chapter 4 of the Nadex Rulebook and this Market Maker Agreement.<sup>2</sup>

Designated Classes Binary Contracts	Section 3(c)(i) and (ii) Fast Markets	Maximum Defined Spread <sup>3</sup>	Minimum Defined Size
<p>Currencies<sup>4</sup>: Intraday 2-Hour, Daily, and Weekly</p> <ul style="list-style-type: none"> <li>▪ EUR/USD Binary</li> <li>▪ GBP/USD Binary</li> <li>▪ USD/JPY Binary</li> <li>▪ USD/CHF Binary</li> <li>▪ USD/CAD Binary</li> <li>▪ EUR/JPY Binary</li> <li>▪ GBP/JPY Binary</li> <li>▪ AUD/USD Binary</li> <li>▪ EUR/GBP Binary</li> <li>▪ AUD/JPY Binary</li> </ul>			

<sup>1</sup> Market Maker acknowledges and agrees that any activity that is not for the purpose of making a market as defined in this Agreement shall be submitted by Order (rather than Quote). All Order shall be subject to the regular member fees as set forth in the fee schedule.

<sup>2</sup> Market Maker shall make a good faith best effort to price equivalent markets in the Nadex Demo environment, but will not be held to the Maximum Defined Spread and Minimum Defined Size requirements set forth in this Appendix.

<sup>3</sup> Market Maker will not be deemed to have violated the maximum defined spread obligation in the event the maximum bid/ask spread is exceeded as the result of the adjustment of a Post-Only (Price Adjustment) quote by the Exchange.

<sup>4</sup> For any Currency Binary Contract, Market Maker may widen the maximum spread to 25% during the last 15 minutes prior to the expiration of that Contract, or in a Fast Market as that term is defined in the Market Maker Agreement. Market Maker is not required to submit quotes during a Fast Market, however, if the Market Maker chooses to submit quotes during this time period, the Market Maker must comply with the maximum spread of 25% and minimum defined size of 20 contracts per side.

<p>Currencies: Intraday 5-Minute</p> <ul style="list-style-type: none"> <li>▪ EUR/USD Binary</li> <li>▪ GBP/USD Binary</li> <li>▪ USD/JPY Binary</li> <li>▪ AUD/USD Binary</li> <li>▪ USD/CAD Binary</li> <li>▪ EUR/JPY Binary</li> <li>▪ GBP/JPY Binary</li> </ul>			
<p>Commodities: Intraday 2-Hour, Daily, and Weekly</p> <ul style="list-style-type: none"> <li>▪ Copper Binary</li> <li>▪ Gold Binary</li> <li>▪ Silver Binary</li> <li>▪ Crude Oil Binary</li> <li>▪ Natural Gas Binary</li> <li>▪ Corn Binary (No Intraday)</li> <li>▪ Soybeans Binary (No Intraday)</li> </ul>			
<p>Indices: Intraday 2-Hour, Daily, and Weekly</p> <ul style="list-style-type: none"> <li>▪ US 500 Binary</li> <li>▪ US SmallCap 2000 Binary</li> <li>▪ US Tech 100 Binary</li> <li>▪ Wall Street 30 Binary</li> <li>▪ FTSE 100 Binary</li> <li>▪ Germany 30 Binary</li> <li>▪ Japan 225 Binary</li> <li>▪ China 50 Binary (No Intraday)</li> </ul>			
<p>Indices: Intraday 20-Minute</p> <ul style="list-style-type: none"> <li>▪ US 500 Binary</li> <li>▪ US SmallCap 2000 Binary</li> <li>▪ US Tech 100 Binary</li> <li>▪ Wall Street 30 Binary</li> </ul>			<p style="text-align: right;">Page 5 of 7</p>





Japan 225 Index Intraday 20-Minute Binary			
Events Binary Contracts <ul style="list-style-type: none"> <li>▪ Federal Funds</li> <li>▪ Jobless Claims</li> <li>▪ Non-Farm Payrolls</li> </ul>			

Designated Classes Spread Contracts	Section 3(c)(i) Fast Markets	Maximum Defined Spread <sup>5</sup>	Minimum Defined Size
Daily Wide and Daily Narrow, 8 or 8.25-Hour, and Intraday 2-Hour <ul style="list-style-type: none"> <li>▪ Germany 30 Spread</li> <li>▪ FTSE 100 Spread</li> <li>▪ Wall Street 30 Spread</li> <li>▪ US 500 Spread</li> <li>▪ US Tech 100 Spread</li> <li>▪ US SmallCap 2000 Spread</li> <li>▪ Silver Spread (Daily Wide and Daily Narrow, 5.5-Hour, and Intraday 2-Hour)</li> </ul>			
<ul style="list-style-type: none"> <li>▪ Gold Spread (Daily Wide and Daily Narrow, 5.5-Hour, and Intraday 2-Hour)</li> <li>▪ Crude Oil Spread (Daily Wide and Daily Narrow 6.5-Hour, and Intraday 2-Hour)</li> </ul>			

<sup>5</sup> Market Maker will not be deemed to have violated the maximum defined spread obligation in the event the maximum bid/ask spread is exceeded as the result of the adjustment of a Post-Only (Price Adjustment) quote by the Exchange.



<ul style="list-style-type: none"> <li>▪ Copper Spread (Daily Wide and Daily Narrow, 5-Hour, and Intraday 2-Hour)</li> <li>▪ Natural Gas Spread (Daily Wide and Daily Narrow, 6.5-Hour, and Intraday 2-Hour)</li> <li>▪ Corn (Daily Wide and Daily Narrow)</li> <li>▪ Soybeans (Daily Wide and Daily Narrow)</li> <li>▪ Japan 225 (Daily Wide and Daily Narrow)</li> </ul>			
<p>Daily, 8-Hour, 5-Hour, and Intraday 2-Hour</p> <ul style="list-style-type: none"> <li>▪ AUD/USD</li> <li>▪ EUR/JPY</li> <li>▪ EUR/USD</li> <li>▪ GBP/JPY</li> <li>▪ GBP/USD</li> <li>▪ USD/JPY</li> <li>▪ USD/CHF</li> <li>▪ USD/CAD</li> <li>▪ EUR/GBP (Daily Only)</li> <li>▪ AUD/JPY (Daily Only)</li> </ul>			

**MARKET MAKER**

Signed for and on behalf of Market Maker:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NORTH AMERICAN DERIVATIVES EXCHANGE, INC.**

Signed for and on behalf of Nadex:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_