



August 22, 2019

Via CFTC Portal Submissions

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

RE: Self-Certification Rule Amendments: Nadex Amends Rules 2.10 Consent to Jurisdiction, 9.2 Investigations, Hearings, and Appeals, and 9.3 Settlement of Investigations – Submission Pursuant to Commission Regulation §40.6(a)

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and section §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission (the “Commission”) under the Act (the “Regulations”), North American Derivatives Exchange, Inc. (“Nadex”, the “Exchange”) hereby submits to the Commission its intent to amend its Rules 2.10 Consent to Jurisdiction, 9.2 Investigations, Hearings, and Appeals, and 9.3 Settlement of Investigations.

Nadex Rule 2.10, Consent to Jurisdiction, was added in August 2012 pursuant to a Joint Compliance Committee (“JCC”) consensus that all Exchanges would adopt similar language requiring any person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any person for whose benefit such a transaction has been initiated or executed, consent to the jurisdiction of the Exchange. Nadex is amending this Rule to clarify that this jurisdiction is continuing and shall survive termination of membership. This addition will make clear Nadex’s ability to prevent someone who would otherwise be subject to jurisdiction of the Exchange from attempting to evade Exchange disciplinary action by terminating its membership prior to Nadex opening an investigation.

On April 2, 2019, Nadex submitted a self-certification submission regarding its Rule 9.2 (Investigations, Hearings, and Appeals) to clarify that a Nadex investigation, and any information and documentation collected or obtained in connection with an investigation, shall be treated as non-public and confidential. This amendment became effective as of April 17, 2019. Nadex is amending this Rule to clarify that only information and documents which were not made public prior to the investigation will be considered confidential for purposes of Rule 9.2, and information and documents which were public prior to the investigation will remain public.

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Finally, Nadex is amending its Rule 9.3 Settlement of Investigations to more closely align its procedures during the settlement negotiation phase of a case with standard industry settlement practices. Namely, only settlement offers which have been approved by the Compliance Department will be submitted to a Nadex hearing officer for consideration.

Core Principles

Rule 2.10 Consent to Jurisdiction

Nadex has identified the following Designated Contract Market (“DCM”) Core Principle as potentially being impacted by this amendment: Core Principle 2 (Compliance with Rules).

Core Principle 2, as implemented by Regulation 38.153, requires a DCM to have arrangements and resources for effective enforcement of its rules, including the authority to collect information and documents, and authority to examine books and records kept by a DCM Members and by persons under investigation. Nadex is amending its Rule 2.10 to clarify that Exchange jurisdiction over any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, is continuing and will survive termination of any Person’s membership. This clarification will prevent a potential investigation subject from evading disciplinary action by voluntarily terminating the subject’s membership or relationship with the Exchange before commencement or completion of that investigation. The clarification therefore furthers the Exchange’s capacity to detect and investigate rule violations and not negatively impact Nadex’s ability to comply with the Core Principle.

Nadex has identified the following Derivatives Clearing Organization (“DCO”) Core Principle has potentially being impacted by these amendments: Core Principle H (Rule Enforcement). Core Principle H, as implemented by Commission Regulation 39.17, requires a DCO to have the authority and ability to discipline, limit, suspend, or terminate the activity of a clearing member due to a violation by the clearing member of any rule of a DCO. Nadex is amending its Rule 2.10 to clarify Nadex’s jurisdictional authority in furtherance of Nadex’s authority to discipline, limit, suspend or terminate the activity of a clearing member under this Core Principle. Accordingly, the amendment discussed herein will not negatively impact Nadex’s ability to comply with this Core Principle.

Rule 9.2 Investigations, Hearings, and Appeals

Nadex has not identified any DCM or DCO Core Principles that may be potentially affected by the clarification of its Rule 9.2 that information and documents made public prior to an investigation will not be treated as confidential for purposes of Rule 9.2.

Rule 9.3 Settlement of Investigations

Nadex has identified the following DCM Core Principle as potentially being affected by this amendment: Core Principle 13 (Disciplinary Procedures).

Core Principle 13 (Disciplinary Procedures), implemented by Commission Regulations 38.700, requires a DCM to establish procedures that authorize a DCM to discipline market participants that violate the Rules of the Exchange. Nadex currently has procedures for the review of settlement negotiations during a disciplinary action by a hearing officer and is amending these procedures to provide

for a more efficient review and approval process. Accordingly, the amendments discussed herein will not have a negative impact on Nadex's ability to comply with this Core Principle.

Nadex has identified the following DCO Core Principle as potentially being affected by the amendment to Rule 9.3: Core Principle H (Rule Enforcement). Core Principle H, as implemented by Commission Regulation 39.17, requires a DCO to maintain adequate arrangements and resources for the enforcement of compliance with its rules and the resolution of disputes. Nadex is amending the procedures by which it submits settlement offers to a hearing officer described in Rule 9.3 in order to improve the efficiency of the settlement process by submitting to the hearing officer only one offer that has been agreed to by the parties. This change improves Nadex's arrangements the resolution of disputes, and therefore will not negatively impact Nadex's ability to comply with this Regulation.

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

Pursuant to the 10-day filing period under Regulation 40.6(a)(3), Nadex intends to implement these new rules and amendments on trade date September 9, 2019.

Nadex hereby certifies that the additions contained herein comply with the Act, as amended, and the Commission Regulations adopted thereunder. No substantive opposing views were expressed to Nadex with respect to any of these actions. Nadex hereby certifies that notice of these events was posted on its website at the time of this filing.

Should you have any questions regarding the above, please do not hesitate to contact me by telephone at (312) 884-0927 or by email at jaime.walsh@nadex.com.

Sincerely,



Jaime M. Walsh
Legal Counsel

EXHIBIT A

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EXHIBIT A

| Rule | Asset | Duration/Close Time | Action | Effective Date |
|-------------|---------------------------------------|----------------------------|---|-----------------------|
| 2.10 | Consent to Jurisdiction | N/A | Add language indicating continuing jurisdiction. | 9/9/2019 |
| 9.2 | Investigations, Hearings, and Appeals | N/A | Clarify that public information prior to an investigation will remain public. | 9/9/2019 |
| 9.3 | Settlement of Investigations | N/A | Revise procedures for submitting settlement offers to hearing officer. | 9/9/2019 |

EXHIBIT B

Amendment of Rules 2.10, 9.2, 9.3

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

RULES 1.1 – 2.9 [UNCHANGED]

RULE 2.10 CONSENT TO JURISDICTION

Any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the Rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes. The consent to jurisdiction under this Rule shall continue notwithstanding a termination of any Person's membership.

RULES 3.1 – 9.1 [UNCHANGED]

RULE 9.2 INVESTIGATIONS, HEARINGS, AND APPEALS

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

(b) The Compliance Department will endeavor to complete any investigation within twelve months, unless there exists significant reason to extend it beyond such period. Upon the

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conclusion of any investigation, the Compliance Department will draft a document detailing the facts that led to the opening of the investigation, the facts that were found during the investigation, and the Compliance Department's analysis and conclusion. If the Compliance Department concludes that there is reasonable cause to believe a Member has violated Nadex's Rules or other applicable statutes or regulations, the Compliance Department will submit by to the Member whose activity is the subject of the investigation a report, by electronic mail to that Member's last known email address, that will include:

- (i) the reason the investigation was begun;
- (ii) the charges or a summary of the charges, including the rule or rules alleged to have been violated;
- (iii) the response, if any, or a summary of the response;
- (iv) a summary of the investigation conducted;
- (v) findings of fact and the Compliance Department's conclusions as to each charge, including which of these Rules the Member or its authorized representative violated, if any;
- (vi) a summary of the Member's, and any relevant authorized representative's, disciplinary history, if any; and
- (vii) the penalty, if any, proposed by the Compliance Department.

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

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

(e) The Member whose activity is the subject of the investigation may request to enter settlement negotiations by forwarding a response to the Compliance Department's findings by

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

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

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

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

(ii) At least 28 days in advance of a hearing, the Member respondent shall submit to the Compliance Department, and the Compliance Department shall submit to the Member respondent, copies of all books, documents, records and other tangible evidence, which each plans to rely on or refer to during its direct case at the hearing, and provide a list of the names and titles of witnesses that each plans to call on its direct case at the hearing. The hearing officer may refuse to consider any books, records, documents or other tangible evidence which was not made available to, or witnesses whose names and titles were not submitted to, the other party pursuant to this section. To the extent the Compliance Department or the Member respondent intends to call any expert witness at the hearing then such party shall provide to the other, at least 28 days prior to the date of the hearing, a summary of the expert's opinions to be offered at the hearing and the basis and/or methodology

underlying such opinions. In addition, the expert's credentials (e.g., a curriculum vitae) and all documents or other materials on which the expert relied in forming his opinions shall be produced to the other party at the same time. For purposes of this provision, staff in the Compliance Department or other Nadex employee shall not be considered experts. The hearing officer may decline to consider any expert testimony beyond the scope of the submitted summary.

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

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

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

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

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

(h) Either the Member or the Compliance Department may appeal the decision of the hearing officer within 15 days by filing an appeal by electronic mail with the Nadex board of directors and forwarding a copy to the other parties to the appeal. Any penalties will be stayed pending appeal unless the hearing officer determines that a stay pending appeal would likely be

detrimental to the exchange, other Members, or the public. The board of directors will review the hearing record and any information submitted by the Compliance Department and the Member on appeal and issue its decision, which shall be final on the date of such issuance. The Member shall be notified of the decision by electronic mail to the Member's last known email address. The hearing record, any information submitted on appeal, and the board's decisions shall be preserved as the record on appeal. The decision will contain the information listed in paragraph (f) of this Rule, except for (f)(vi), and will also contain:

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

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

RULE 9.3 SETTLEMENT OF INVESTIGATIONS

(a) Nadex may enter into settlements with any Member or its authorized representative who is the subject of an investigation. The Member, or its authorized representative may initiate a settlement offer. A Member, or its authorized representative, may submit an offer of settlement without admitting or denying the Rule violations or factual findings upon which the penalty is based, provided, however, that an offer must include a consent to the entry of findings regarding the conduct and Rule violations at issue, to the penalty to be imposed and to the effective date of the penalty. A settlement offer that is supported by the Compliance Department ~~Any settlement offer shall be forwarded to a Nadex hearing officer for consideration, along with the Compliance Department's supporting statement. The hearing officer may accept, accept with modifications, or reject a proposed settlement offer, with a recommendation by the Compliance Department that the proposed settlement be accepted, rejected, or modified.~~ A settlement offer may be withdrawn at any time before it is accepted by the hearing officer.

(b) The hearing officer may accept or reject a proposed settlement, and the decision of the hearing officer will be final. In addition, the hearing officer may propose a modification to the proposed settlement for consideration by the Member or its authorized representative and the Compliance Department.

(c) Any settlement under this Rule will be written and will state:

- (i) the charges or a summary of the charges;
- (ii) the response, if any, or a summary of the response;
- (iii) a summary of the investigation conducted;

(iv) findings and conclusions as to each charge, including each act the person charged was found to have committed or omitted, be committing or omitting, or be about to commit or omit, and each of these Rules that such act or practice violated, is violating, or is about to violate; and

(v) any penalty imposed and the penalty's effective date.

(d) Failed settlement negotiations, or withdrawn settlement offers, will not prejudice a Member or otherwise affect subsequent procedures in the rule enforcement process.

RULE 9.4 – 12.65 [UNCHANGED]

End of Rulebook.

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