



Via Portal Submission

August 26, 2020  
MGEX Submission No. 21-46

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)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Exchange Act (“CEAct”) Section 5c and Commodity Futures Trading Commission (“CFTC”) Regulation 40.6(a), the Minneapolis Grain Exchange, LLC (“MGEX” or “Exchange”) hereby certifies that submission of the attached MGEX Rules complies with the CEAct and the CFTC 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.

Pursuant to an agreement between the parties, MGEX will provide clearing services for derivative contracts traded on Bitnomial Exchange, LLC (“Bitnomial”). In preparation to begin clearing Bitnomial contracts, MGEX made certain additions and amendments to Chapters 1, 21, and 23 of the MGEX Rules and submitted the same to the CFTC for certification pursuant to Regulation 40.6(a) on July 14, 2020, with additional clarifying amendments submitted on December 18, 2020 and March 4, 2021.

Because these Rule amendments were not implemented for twelve consecutive months following certification, they are considered “Dormant rules” under CFTC Regulation 40.1(g). Consequently, MGEX is submitting them for certification in accordance with CFTC Regulation 40.6(a). The attached amendments show the collective Rule changes previously made, but the Exchange has made no other changes since certification. **As a result, this submission reflects only previously certified Rule changes and contains neither additions nor changes.**

## **DCO Core Principles**

The Exchange has reviewed the core principles for derivatives clearing organizations (“DCO Core Principles”) and has determined that the amendments continue to comply with the requirements of such principles.

- *DCO Core Principle C – Participant and Product Eligibility:* Core Principle C requires a DCO to establish admission and continuing eligibility standards for its members. The previously submitted new Chapter 23 clarifies and establishes requirements for Clearing Member eligibility as it relates to Clearing Members seeking approval to clear Bitnomial contracts in compliance with Core Principle C.
- *DCO Core Principle G – Default Rules and Procedures:* The previously submitted amendments to Chapter 21 address the actions the Exchange would take and allow following a Clearing Member default and thus augment MGEX’s default rules and procedures.
- *DCO Core Principle H – Rule Enforcement:* As codified in CFTC Regulation 39.17, Core Principle H requires a DCO to have the authority and ability to discipline the activities of a Clearing Member due to a violation by the Clearing Member of the DCO’s rules. The previously submitted new Chapter 23 includes Rules that explicitly allow MGEX to discipline and/or fine Clearing Members violating Rules.
- *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, comprehensive rules and procedures. The previously submitted amendments enhance transparency with respect to the procedures MGEX will follow in various circumstances and will be incorporated into MGEX’s publicly available Rulebook, thus further ensuring that the information available to the public is accurate, clear, and comprehensive.
- *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 previously submitted 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 Bylaws, the MGEX Board of Directors unanimously approved the attached amendments to the MGEX Rules. 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 when incorporated into MGEX’s Rules on its website, which will be at least 10 business days 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, flowing style.

Lindsay R. Hopkins  
Chief Corporate Counsel, Clearing

## EXHIBIT A

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

## CHAPTER 1 DEFINITIONS

**BITNOMIAL EXCHANGE:** Bitnomial Exchange, LLC, a Delaware limited liability company.

**BITNOMIAL EXCHANGE CONTRACTS:** The Bitnomial Bitcoin Futures Contract, Bitnomial Deci Bitcoin Futures Contract, and Bitnomial Bitcoin Options Contract, each as described in Chapter 12 of Bitnomial Exchange rules.

**SETTLEMENT FACILITY:** The Digital Asset delivery facility, system, or process authorized and operated by Bitnomial Exchange and associated with the trading of Bitnomial Exchange Contracts. The Settlement Facility is not licensed, approved, or registered with the CFTC.

**DIGITAL ASSET:** Bitcoin and any other digital currency that is a “commodity” under the Commodity Exchange Act. For this purpose, “digital currency” means any digital representation of value or digital unit of account used as a medium of exchange and which are generally validated and logged through a network of computers on a distributed ledger.

## CHAPTER 21 CLEARING HOUSE RULES

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

## CHAPTER 21 CLEARING HOUSE RULES

### **2100.00. SCOPE OF CHAPTER AND REQUIREMENTS FOR CLEARING.**

For purposes of these Chapter 21 Rules, unless specifically stated otherwise, all relevant requirements and procedures set forth by the Exchange herein will apply to all contracts cleared by the Clearing House, including those executed on a different designated contract market.

All Futures or Options transactions shall be submitted to the Clearing House to be cleared. The Clearing House shall, through the process of novation, be substituted as, and assume the position of, seller to the buyer and buyer to the seller of the relevant number of Exchange or marketplace contracts upon the successful matching of trade data submitted to the Exchange by the Clearing Members on the long and short sides of a trade. Upon such substitution, each Clearing Member shall be deemed to have bought the contracts from or sold the contracts to the Clearing House, as the case may be, and the Clearing House shall have all the rights and be subject to all the liabilities of such Member with respect to such transaction. Transactions can only be offset against one another through position/trade reporting by a Clearing Member to the Clearing House.

It shall be the duty of each Clearing Member initiating, accepting or executing a transaction for Futures or Options under MGEX Rules to submit each such transaction using "TEMS" to the Clearing House. Transactions shall be submitted at times determined by the Exchange (see **Res. 2101.00.C.**). The transactions shall be in a format approved by the Exchange and shall contain, at a minimum, the following information:

- A. Date of transaction.
- B. Clearing Member code (two-digit alpha as assigned by the Exchange).
- C. Type of account or origin (Regular (R) or Segregated (S)).
- D. Customer type indicator (CTI) as defined below:
  - CTI 1. Transactions initiated and executed by an individual member for his/her own account, for an account he/she controls, or for an account in which he/she has ownership or financial interest.
  - CTI 2. Transactions executed for the proprietary account of a Clearing Member.
  - CTI 3. Transactions where an individual member or nonmember executes for the personal account of another individual member, for an account the other member controls or for an account in which the other individual member has ownership or financial interest.
  - CTI 4. Any transaction not meeting the definition of CTI 1, 2 or 3.

- E. Quantity, commodity, contract month or expiration month, price or premium, whether the transaction involved a put or a call, strike price, buy or sell.
- F. Both the buying and selling Market Participant's identifier (trader ID/Member mnemonic for electronic trades, Broker ID for open outcry trades) and the opposite Clearing Member's symbol.
- G. Transaction time to the minute.
- H. Indicators for the following types of transactions: (C) cash exchange; (T) office transfer\*; (S) spread; (D) delivery; (E) exercise; (R) risk exchange.  
  
\*For office transfers, open and close information for the position (open (O), close (C)) must be submitted.
- I. Account number and identification. (For initial set-up and new accounts, provide a listing of account name, type, and position. This information will be available to the President and designated MGEX personnel only.)
- J. Any other information required by the Clearing House.

The Clearing House shall match the trades as submitted and shall list for each Clearing Member its cleared trades and unmatched trades. A recapitulation statement shall be produced, showing updated contract positions and settling all matched trades to the official ~~MGEX~~ settling prices. After completion of the clearing process, the Exchange shall notify each Clearing Member as to the net pay or collect amounts due by account (Regular and/or Segregated). Such amounts shall be submitted by wire transfer of funds or other acceptable method. Amounts due to the Exchange shall be submitted at times determined by the Exchange (see [Res. 2101.00.C.](#)). All clearing statements shall be disseminated by the Exchange to each Clearing Member's designated contact.

If the report of a trade by a Market Participant does not correspond to the report of the other party to the trade, the Clearing House shall reject the trade and notify both Clearing Members showing the discrepancy of the reports. The Clearing Members must thereafter submit corrections to the Clearing House at times determined by the Exchange (see [Res. 2101.00.C.](#)).

It shall be the primary responsibility of the Clearing Member to see that all trades are resolved. Each Clearing Member shall designate a person or persons to be available and responsible for reconciling the Clearing Member's unmatched trades. Failure to have a qualified representative available shall constitute negligence in the determination of responsibility for any unmatched trades.

If a Clearing Member, or one of its Affiliated Entities, has access to the Federal Reserve discount window, it shall notify the Clearing House if such access has been suspended, revoked, removed, terminated, or otherwise limited in any way as soon as practicable.

## **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 Member Agreement, and the MGEX Rules.
- 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. 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. The Exchange shall determine whether a guarantee is adequate. This requirement may be waived at the discretion of the Exchange.

In addition, a Clearing Member will only be granted clearing privileges to clear Bitnomial Exchange contracts if it meets all of the above requirements and the following terms and conditions:

- E. A Clearing Member must be registered as a futures commission merchant with the CFTC and NFA and meet all applicable requirements, including, but not limited to, requirements relating to minimum net capital, financial reporting, and recordkeeping.
- F. A Clearing Member must have completed and remain in compliance with the terms contained in the Clearing Member Agreement for Clearing Bitnomial Exchange, LLC Contracts.

### **2109.03. LOSSES BORNE BY MGEX: APPLICATION OF FUNDS.**

The Exchange will establish and maintain one guaranty fund with two separate tranches that reflect relative contributions from different product classes to the guaranty fund. Each Clearing Member that is approved by MGEX to clear products traded on the Exchange (such products, the "MGEX Products") must make a deposit as security for its obligations to the Clearing House in accordance with the requirements of **Rule 2105.00.** to the MGEX tranche of the guaranty fund (the "MGEX Tranche"). In addition, when required by MGEX, each Clearing Member that is approved by MGEX to clear products traded on Bitnomial Exchange (such products, the "Bitnomial Products") must make a deposit as security for its obligations to the Clearing House in accordance with the requirements of **Rule 2105.00.** to the Bitnomial tranche of the guaranty fund (the "Bitnomial Tranche"). Such security deposits will be in an amount determined by the Clearing House. The Clearing House will give each Clearing Member a report setting forth such Clearing Member's proportionate share in each tranche, as applicable.

Should MGEX bear a loss resulting from the insolvency or Default of a Clearing Member, 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. For the avoidance of doubt, any such default will be a default to the Clearing House regardless of product class.

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.

Following the insolvency or Default of a Clearing Member, if the collateral of the Defaulting Clearing Member is insufficient to satisfy the Loss associated with the default, the Clearing House will first attempt to isolate the Loss to the associated tranche, if applicable, as set forth below. However, in the event the Defaulted Clearing Member is approved to clear both MGEX Products and Bitnomial Products, the assets of both tranches will be accessible by the Clearing House, as detailed below. 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 Rule shall be the responsibility of the Exchange.

If the Defaulted Clearing Member is only approved to clear MGEX Products:

- A. Excess funds of the Defaulting Clearing Member, including any partial payment amounts, 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 made to the MGEX Tranche shall be applied toward meeting a loss in direct proportion to the total security deposit requirement of each Clearing Member to the MGEX Tranche.
- 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.

If the Defaulted Clearing Member is only approved to clear Bitnomial Products:

- A. Excess funds of the Defaulting Clearing Member, including any partial payment amounts, settlement funds, or variation pays.
- 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 Clearing House reserve fund approved by the Board.
- E. Security deposits of non-defaulting Clearing Members made to the Bitnomial Tranche shall be applied toward meeting a loss in direct proportion to the total security deposit requirement of each Clearing Member to the Bitnomial Tranche.

Notwithstanding the prioritization of funds being applied in the order listed above, should the funds of one tranche be insufficient to cover a Loss, the funds in the remaining tranche will be available, in their entirety, to the Clearing House to satisfy the Loss.

If the Defaulted Clearing Member is approved to clear both MGEX Products and Bitnomial Products:

- A. Excess funds of the Defaulting Clearing Member, including any partial payment amounts, settlement funds, or variation pays.
- 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 for each tranche. MGEX will first apply security deposits from each tranche to the loss calculated for the products within that tranche. Should the loss in one tranche exceed the security deposits available within the same tranche, MGEX will apply the remaining security deposits of any tranche to the remaining loss.
- 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 immediately 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 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 or from the application of their security deposits.

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.

~~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 MCEX, 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.~~

#### **2109.04. MANAGEMENT OF 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, and any other available assets of the insolvent or Defaulted 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 variation pays 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.

#### **2110.00. 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 **Rule 2109.03.** The balance of any Losses remaining, in any tranche, after the application of such funds shall be assessed against ~~all~~ Clearing Members (excluding any Insolvent or Defaulting Clearing Members) in direct proportion to the Clearing Members' total security deposit requirement for that tranche. Should the Loss in one tranche exceed the assessments to Clearing Members in the tranche producing the Loss, the remaining Loss will be assessed to Clearing Members from any remaining tranche. 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~~ of 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 Rule by wire or other method acceptable to MGEX within two (2) hours of the notice of the assessment 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 [Rule 2109.05](#), it may withdraw from Membership by giving written notice to and receiving approval from the Exchange.

#### **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, 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.

Following Board approval, the Clearing House shall issue a notice and conduct a settlement cycle for all ~~MGEX~~ contracts to determine settlement prices for ~~all~~such contracts and the net portfolio gain or loss for each house and customer portfolio:

- A. The net portfolio gain of a Clearing Member (a “collect”), or the net portfolio loss of a Clearing Member to the Clearing House (a “pay”), shall be determined separately for (i) its proprietary positions in ~~MGEX~~ contracts cleared by the Exchange (a “Proprietary Collect” or a “Proprietary Pay”), and (ii) the net positions of its customers in ~~MGEX~~ contracts cleared by the Exchange (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) 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. 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 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 calculate reimbursements of, and distribute, the excess funds to Clearing Members in the reverse order funds were 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 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, the Clearing House shall pay the haircuted Proprietary Collects and Customer Collects as soon as practicable after receipt of the Aggregate Available Funds.
  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.](#)

## **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, nor shall any beneficial holder of an ~~MGEX~~ contract have any claim against its non-defaulting Clearing Member.

## **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.](#)), the net amount of such recovery shall be credited to non-defaulted Clearing Members (whether or not they are Clearing Members at the time of recovery) and Market Participants, as applicable, in 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.](#) (in the reverse order accessed and if necessary, on a pro rata basis).

Any ~~remaining~~ amount remaining after making the above reimbursements may be utilized first to repay any line of credit funds previously accessed. Any other remaining funds will be credited to the ~~Exchange for the amount of the~~ MGEX Clearing House reserve fund utilized with respect to the default.

## **2120.00. 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 ~~MSEX~~ contract as a result of the termination of such contract and related payments in accordance with these Rules.



**CHAPTER 23**  
**BITNOMIAL EXCHANGE CLEARING RULES**

- 23.1. Scope of Chapter and Priority of Rules
- 23.2. Clearing Members
- 23.2.1. Market Participant Access
- 23.3. Market Participants
- 23.4. Clearing Fees
- 23.5. Clearing House Procedures
- 23.6. Futures – Final Settlement
- 23.7. Daily Settlements
- 23.8.1. Options – Last Trading Day and Expiration
- 23.8.2. Options – Automatic Exercise
- 23.9. Deadlines and Summary Fines
- 23.10. Disciplinary Actions
- 23.11. Transfer Trades and Offsets
- 23.12.1. Delivery of Underlying Digital Asset – Clearing Member & Market Participant Duties
- 23.12.2. Accounts Eligible for Delivery
- 23.12.3. Deliverable Instruments
- 23.12.4. Delivery Procedures and Reporting
- 23.13. Management of Default and Losses
- 23.14. Force Majeure
- 23.15. Physical Emergencies
- 23.16. Limitation of Liability

### **23.1. SCOPE OF CHAPTER AND PRIORITY OF RULES.**

This chapter governs procedures related to the clearing, settlement, delivery, and guarantee of trades executed on Bitnomial Exchange. Specifically, MGEX provides clearing services for Bitnomial Exchange Contracts.

If not specifically covered herein, the Rules of the Exchange, and Chapter 21 in particular, shall govern. For purposes of this Chapter, all requirements, conditions, or procedures of the Exchange and the Clearing House will apply specifically to Bitnomial Exchange Contracts.

To the extent that the provisions of this Chapter conflict with any other MGEX Rules, this Chapter supersedes such Rules. MGEX Rules pertaining to the clearing of Bitnomial Exchange Contracts shall have precedence over the rules of Bitnomial Exchange unless expressly and specifically stated otherwise.

### **23.2. CLEARING MEMBERS.**

This Chapter applies to Clearing Members approved by the Exchange to submit Bitnomial Exchange Contracts to the Clearing House for clearing. Clearing privileges may be granted and retained only if a clearing firm is a Clearing Member of the Exchange and when the terms and conditions set forth in **Rule 2100.02**. have been met. The Clearing House has no obligation to accept Bitnomial Exchange Contracts for clearing unless the Clearing Member complies with all MGEX requirements for becoming a Clearing Member of the Exchange and remains in Good Standing, including those requirements set forth in this Chapter. Clearing Members must have the ability to comply with the requirements set forth by Bitnomial Exchange, and both MGEX and Bitnomial Exchange must grant approval of Clearing Members allowed to clear contracts traded on Bitnomial Exchange. For the avoidance of doubt, Clearing Members will not, under any circumstances, be required to own, hold, or control Digital Assets under these Rules or Bitnomial Exchange rules (unless the Clearing Member holds positions requiring delivery in its own proprietary account), but Clearing Members are responsible for ensuring their customers are able to satisfy or satisfy their obligations regarding delivery and acceptance thereof under the applicable MGEX and Bitnomial Rules.

A Clearing Member guarantees and assumes financial responsibility for all orders it places and receives, and all contracts it clears and delivers.

#### **23.2.1. MARKET PARTICIPANT ACCESS.**

After a Clearing Member grants a Market Participant access to trade or use Bitnomial Exchange systems, such Clearing Member will be fully responsible for the actions and transactions of any and all users that are provided access to the Bitnomial Exchange match engine by such Market Participant or any other user approved by the Market Participant. Clearing Members acknowledge that an approved Market Participant will have the ability to designate its own users directly with Bitnomial Exchange without receiving separate Clearing Member approval. For the avoidance of doubt, Clearing Members guarantee and assume financial responsibility for all transactions placed and executed on Bitnomial Exchange by a Market Participant approved by the Clearing Member and all additional users authorized directly or indirectly by a Market Participant, including unknown users.

### **23.3. MARKET PARTICIPANTS.**

All participants approved to trade on Bitnomial Exchange must establish an account with an Exchange Clearing Member (or be properly authorized by a Clearing Member approved participant), and if involved with delivery, must satisfy the delivery prerequisites set forth by Bitnomial Exchange Rule 1102(b). Market Participants seeking to make or take delivery must meet the requirements set forth by Bitnomial Exchange and applicable MGEX Rules. Bitnomial Exchange and MGEX must grant approval to any Market Participant prior to participating in the delivery process of a Futures Contract traded on Bitnomial Exchange.

#### **23.4. CLEARING FEES.**

Clearing fees for Bitnomial Exchange Contracts, and the manner of payment thereof, shall be determined by the Clearing House.

#### **23.5. CLEARING HOUSE PROCEDURES.**

The Clearing House may immediately adopt, modify, or cancel procedures, including but not limited to, reporting, submission times, the deadlines set forth in **Rule 23.9.**, settlement process, settlement times, margin and variation payments means and methods, give up procedures, confirmations, closing, product listing procedures and coding, and recordkeeping. The Exchange may incorporate into its Rules, as appropriate, such clearing procedures, including those noted above determined necessary for effective clearing.

#### **23.6. FUTURES – FINAL SETTLEMENT.**

Bitnomial Exchange Futures positions open as of the contract's close of business on the last trading day will be settled in accordance with Bitnomial Exchange's settlement procedures.

#### **23.7. DAILY SETTLEMENTS.**

Bitnomial Exchange is solely responsible for determining and providing daily settlement values and data for all Bitnomial Exchange Contracts to the Clearing House and is responsible for the accuracy of such final settlement values and data. The Exchange shall not be liable for the settlement prices received for such contracts.

#### **23.8.1. OPTIONS – LAST TRADING DAY AND EXPIRATION.**

The last trading day will be the Friday that precedes by at least two (2) Business Days, the last Business Day of the month preceding the option month. If such Friday is not a Business Day, the last trading day shall be the preceding Business Day.

The contractual rights and obligations arising from the option contract expire on the last day of trading.

#### **23.8.2. OPTIONS – AUTOMATIC EXERCISE.**

The Exchange will automatically exercise all in-the-money options unless notice to cancel automatic exercise is given to the Clearing House. Such options will be exercised into Futures Contracts and settled as part of the Futures process.

Notice to cancel automatic exercise shall be given to the Clearing House in accordance with the deadline set forth below on the last day of trading except that such notice must be given to the

Clearing House prior to 4:30 p.m. Central Time on the expiration date:

- A. to correct errors or mistakes made in good faith;
- B. to take appropriate action as the result of unreconciled MGEX Option transactions;
- C. in exceptional cases involving a customer's inability to communicate to the Clearing Member exercise instructions or the Clearing Member's inability to receive such instructions prior to such time as determined by the Exchange on the last day of trading.

### **23.9. DEADLINES AND SUMMARY FINES.**

The schedule of deadlines is subject to change at any time by the Exchange. The Exchange has adopted the following schedule of reporting deadlines (all times shall conform to Central Time):

<u>7:30 a.m.</u>	<u>Position reports</u>
<u>9:00 a.m.</u>	<u>Settlement and margin payment</u>
<u>11:00 a.m.</u>	<u>Trading directive for same day collateral pledges*</u> <u>Trading directive for same day collateral pledge release*</u>
<u>11:15 a.m.</u>	<u>Weekly account position updates</u>
<u>11:30 a.m.</u>	<u>Intraday variation payment</u>
<u>4:10 p.m.</u>	<u>Unmatched trade adjustments</u>
<u>4:15 p.m.</u>	<u>Last submission of trades</u> <u>Give-up execution</u>
<u>4:20 p.m.</u>	<u>Give-up acceptance</u>
<u>4:30 p.m.</u>	<u>Auto-Exercise Cancellation Notices</u> <u>Options position reports on expiration day</u>
<u>5:10 p.m.</u>	<u>Binomial delivery files</u>
<u>7:30 p.m.</u>	<u>Customer gross margin files</u>

**\*Submitting a Trading directive to the Exchange does not guarantee same day transfers of a security. MGEX is not responsible for delays caused by the inaccuracy or untimely submission of information by a Clearing Member required to facilitate the transfer of securities to or from MGEX's safekeeping accounts.**

Any unresolved unmatched trades may be suspended pending possible resolution the following Business Day as an "as of" trade. "As of" trades can be carried no longer than one Business Day.

All give up trades properly entered by the executing Clearing Member by four fifteen o'clock (4:15) p.m. must be accepted by the carrying Clearing Member by four twenty o'clock (4:20) p.m.

In addition to the deadlines set forth above, the Exchange has adopted delivery specific deadlines (see **Rule 23.12.4.**).

Any deadline or submission listed herein that is missed, late, inaccurate or incomplete, may result in a summary fine or other disciplinary action, including but not limited to, the matter being referred to the Disciplinary Committee as determined by the Exchange.

Trading session submissions must be submitted accurately and in accordance with the deadlines set forth in this Rule. All submissions received after the respective deadlines are subject to a warning letter or fine. The schedule is as follows:

<u>1<sup>st</sup> Offense:</u>	<u>Warning Letter</u>
<u>2<sup>nd</sup> Offense:</u>	<u>\$1,000 fine</u>
<u>3<sup>rd</sup> Offense:</u>	<u>\$2,500 fine</u>
<u>4<sup>th</sup> Offense:</u>	<u>\$5,000 fine</u>

The 5<sup>th</sup> offense and every subsequent offense will be referred to the Disciplinary Committee. Offenses and fines shall be based upon events occurring within a rolling twelve (12) month period. The Exchange may determine whether a warning letter or a fine is warranted based on the facts and circumstances, and may take further disciplinary action, increase the fine amount, or present the matter to the Disciplinary Committee.

In the event a fine is imposed, the Exchange will issue a notice of the offense and fine amount to the offending party. Any fines must be paid within thirty (30) days of issuance unless otherwise stated by the Exchange.

### **23.10. DISCIPLINARY ACTIONS.**

Notwithstanding any provision of the rules of Bitnomial Exchange, all Clearing Members are subject to the jurisdiction of the Exchange. In the event a Clearing Member violates the requirements of any rule, report, submission, deadline, or other obligation, the Exchange may impose a fine on the Clearing Member or take other disciplinary action including, but not limited to, referring the matter to the Disciplinary Committee. In addition, a Clearing Member that violates or is alleged to have violated any delivery requirement or deadline herein will be subject to the disciplinary procedures set forth in Chapter 12.

### **23.11. TRANSFER TRADES AND OFFSETS.**

Transfer trades involving contracts or positions traded on Bitnomial Exchange will be governed in accordance with the rules of Bitnomial Exchange. All transfers in physically delivered Futures Contracts must be recorded and carried on the books of the receiving Clearing Member at the original trade dates. All other contracts may be recorded and carried at either the original trade date or the transfer date.

“Transfer” trades involving the transfer of a customer’s positions and related collateral from an account on the books of one Clearing Member to another Clearing Member shall not require the close-out and re-booking of the positions prior to the requested transfer; PROVIDED, the following conditions are met: (1) The customer instructed the carrying Clearing Member to make the transfer, and (2) the receiving Clearing Member has consented to the transfer.

MGEX Rules 718.01. and 718.02. shall govern transfer trades and offsets and the associated reporting requirements.

### **23.12.1. DELIVERY OF UNDERLYING DIGITAL ASSET – CLEARING MEMBER & MARKET PARTICIPANT DUTIES.**

Any Clearing Member carrying an account of a Market Participant that is required to make or take delivery agrees to guarantee and assume full responsibility that its customers, as Market Participants, will comply with all delivery obligations set forth in MGEX and Bitnomial Exchange Rules including Rules requiring that Digital Assets be delivered by Market Participants during the Delivery Period in accordance with the Bitnomial Exchange delivery rules. For purposes of these Rules, the “Delivery Period” means the period beginning two Business Days before the last trading day and ending on the delivery day. Clearing Members must file all required forms and reports by the deadlines established by MGEX, including but not limited to final open positions and delivery reports.

Clearing Members are responsible for ensuring that their customers, as Market Participants, that have an obligation or desire to make delivery have the operational ability to, and ultimately satisfy, their full delivery obligation and that such customers have made deliverable Digital Assets available to deliver with the Settlement Facility by 9:30 a.m. on the last trading day in accordance with all applicable Rules. Should a customer fail to deliver Digital Assets in accordance with applicable requirements and the Clearing Member of such customer financially satisfies such obligation, the opposite customer who failed to receive the Digital Assets may still file an arbitration claim against the non-performing customer and/or such customer’s Clearing Member in accordance with Bitnomial Exchange Rules.

In the event a Clearing Member fails to perform its delivery obligations to the Clearing House, MGEX may deem such failure a default pursuant to this Rule and take any of the actions against the Clearing Member authorized in this or other MGEX Rules. For the avoidance of doubt, Clearing Members will not, under any circumstances, be required to own, hold, or control Digital Assets under these Rules or Bitnomial Exchange rules (unless the Clearing Member holds positions requiring delivery in its own proprietary account), but Clearing Members are responsible for ensuring their customers, as Market Participants, are able to satisfy or satisfy their obligations regarding delivery and acceptance thereof under the applicable MGEX and Bitnomial Rules.

In a Clearing Member default that involves a delivery failure, the Clearing House will ensure the financial performance to the Clearing Member whose actions or omissions did not cause or contribute to the delivery failure (the “Affected Clearing Member”). The Clearing House powers will include, but are not limited to, the right to sell or liquidate the Digital Asset subject to delivery and to distribute the proceeds as appropriate and access the funds and collateral available in a default in accordance with **Rule 2109.03**. For purposes of this Rule, “financial performance” means payment of commercially reasonable costs of the Affected Clearing Member related to replacing the failed delivery but does not include physical performance or legal fees. For the avoidance of doubt, payment of reasonable costs will be based on the price of the Digital Asset when delivery should have been made, and the Clearing House is not obligated to make or accept delivery of the actual Digital Asset.

An Affected Clearing Member seeking financial performance must provide prompt notice to the Clearing House and to Bitnomial Exchange of the delivery failure and a good faith estimate of any financial performance being sought within one (1) hour of the delivery deadline set forth in **Rule 23.12.4**. for the product. This deadline may be extended by the Exchange for extenuating

circumstances in its sole discretion. An Affected Clearing Member seeking financial performance must provide the Clearing House with a detailed statement with supporting documentation of the amount sought, as well as any other documentation requested by the Clearing House.

MGEX shall not, under any circumstances, be responsible or liable for any losses, damages, or other costs arising out of a failure, malfunction, error, omission, delay, suspension, inaccuracy, or other event related in any way to the storing, transfer, delivery transfer, or movement of Digital Assets in association with Bitnomial Exchange Contracts.

**23.12.2. ACCOUNTS ELIGIBLE FOR DELIVERY.**

Only accounts approved for delivery shall be eligible for delivery and allowed to maintain open positions during the delivery month of an expiring Bitnomial Exchange Contract.

Any positions held in an account not approved for delivery must be liquidated by the first business day of the delivery month by an MGEX Clearing Member. The Clearing House or Bitnomial Exchange will not be liable for any loss associated with such liquidation. In addition, a Clearing Member that is carrying any position not held in an account approved for delivery at any time during the delivery month will be subject to Exchange disciplinary action, including, but not limited to, fines or referring the matter to the Disciplinary Committee.

**23.12.3. DELIVERABLE INSTRUMENTS.**

To qualify as a Digital Asset eligible for contract delivery, the Digital Asset must meet the requirements of Bitnomial Exchange Rule 1103(c) and product descriptions.

**23.12.4. DELIVERY PROCEDURES AND REPORTING.**

Unless stated otherwise, the Clearing House will electronically issue notices and reports to relevant Clearing Members.

Delivery of a Bitnomial Exchange Contract is based upon open positions after contract expiration. The delivery process, as set forth below, consists of the following requirements and deadlines (all references to days are Business Days and times are noted in Central time):

<b><u>T-5</u></b>	<b><u>5 Days Prior to Last Trading Day</u></b>		<u>All end of day positions (long and short) must be margined at full notional value in USD with the MGEX Clearing House.</u>
		<b><u>5:10 p.m.</u></b>	<u>Clearing Members file Bitnomial delivery files and all other requested information at the end of each day with the Clearing House.</u>
<b><u>T-2</u></b>	<b><u>2 Days Prior to Last Trading Day (start of Delivery Period)</u></b>	<b><u>5:00 p.m.</u></b>	<u>Settlement Facility opens to delivering Market Participants.</u>
<b><u>T</u></b>	<b><u>Last Trading Day</u></b>	<b><u>9:30 a.m.</u></b>	<u>Clearing Members are responsible for ensuring all Market Participants making delivery deliver</u>

	<u>of Contract</u>		<u>underlying asset through Settlement Facility.</u>
		<u>5:10 p.m.</u>	<u>Clearing Members file Bitnomial delivery files with the Clearing House, which will serve as a binding Delivery Notice to MGEX.</u>
		<u>8:45 p.m.</u>	<u>Clearing House issues final Delivery Report and corresponding payment information.</u>
<u>T+1</u>	<u>Delivery Day</u>	<u>11:30 a.m.</u>	<u>All payments for delivery are due to the delivering Clearing Member.</u>
		<u>12:30 p.m.</u>	<u>Clearing Member notification to Bitnomial Exchange and Clearing House regarding receipt of final payment is due.</u>
		<u>By 7:00 p.m.</u>	<u>Delivery process and movement of corresponding Digital Assets is completed.</u>
<u>T+2</u>	<u>Release of Margin</u>	<u>By 9:00 a.m.</u>	<u>Provided that notification of delivery has been received by the applicable Delivery Day deadlines, MGEX will release margins.</u>

Any discrepancies or material reporting errors may result in MGEX disciplinary action.

### 23.13. MANAGEMENT OF DEFAULT AND LOSSES.

Should MGEX bear a Loss resulting from the Default of a Clearing Member or from the failure or insolvency of a settlement or depository bank that precipitates a Clearing Member Default, the procedures set forth in Chapter 21 of the Exchange Rules shall govern.

### 23.14. FORCE MAJEURE

Notwithstanding any other Rule or provision, the Exchange and Clearing House will not be obligated to perform its obligations under the Rules, or to compensate any Clearing Member for losses occasioned by any delay or failure of performance, to the extent such delay or failure is the result of a condition or event constituting Force Majeure, including but not limited to acts of God, fire or other natural disasters, acts of terrorism, war, or severely inclement weather. In such event, the Exchange will give notice to affected Clearing Members as soon as reasonably practicable and will attempt to remediate the condition.

### 23.15. PHYSICAL EMERGENCIES.

If the Bitnomial Exchange trading platform, the Settlement Facility, or the Clearing House experience a full or partial disruption or breakdown in any area, the Exchange may, without prior notice, immediately modify or suspend clearing operations and procedures involving Bitnomial Exchange Contracts until the problem has been resolved.



### **23.16. LIMITATION OF LIABILITY.**

Neither the Exchange, the Board of Directors, its committees, nor any of its officers, directors, or employees, shall be liable for any losses, damages, or costs, including direct, indirect, special, incidental or consequential damages, and lost profits, regardless of whether any of them had been advised or otherwise made aware of the possibility of such damages, arising out of the services provided by the Exchange as it pertains to the clearing of Bitnomial Exchange Contracts or as it pertains to the use or performance of the Bitnomial Exchange platform or Settlement Facility or any component(s) thereof; any fault, failure, malfunction, or other alleged defect in any such contract or platform; or any error, omission, delay, suspension, or inaccuracy made by Bitnomial Exchange. The Exchange shall not be liable for any damages or losses caused in whole or in part by the malfunction, unexpected function, or unintended function of the Settlement Facility or any attacks or cybersecurity breach, fraud or other illegal activity directed at the Settlement Facility. The Clearing House shall not be liable for any connectivity or communication fault, delay, or breakdown, including but not limited to, any failure to delay in transmission, disruption of common carrier lines, loss of power, acts or failures to act of any third party, natural disasters, or any and all other causes. The Exchange does not guarantee continuous, uninterrupted, or secure access to the Clearing House.

Each Market Participant assumes all risks of trading on the Bitnomial Exchange platform and use of the Settlement Facility and waives any right to assert any claim against the Exchange that access or information was not provided by the Exchange or that access or information provided by the Exchange was improper, inaccurate, or inadequate. Further, such Market Participant will not use the Exchange to contest the validity or enforceability of any trade executed on the Bitnomial Exchange platform.

Neither the Exchange, the Board of Directors, its committees, nor any of its officers, directors, or employees make any express or implied warranties or representations relating to the Bitnomial Exchange platform, including but not limited to, warranties of merchantability and warranties of fitness for a particular purpose or use.

Notwithstanding any other provision of the Exchange Rules, in no event will any Person bring any legal action, regardless of whether liability is based on breach of contract, tort, restitution, breach of statutory duty, breach of warranty or otherwise, and regardless of whether the claim is brought directly or as a third-party claim for indirect, special, incidental, consequential, or punitive damages of any kind, however suffered or incurred, and regardless of whether the party from whom such damages would be sought has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.