



August 26, 2016

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: Self-Certification Rule Amendments: Nadex Amends its Rules and Fee Schedule Pertaining to FIX Connections, and Amends Notice Period for Settlement Errors to 24 Hours - 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 Rulebook and Fee Schedule to remove references to Exchange access by FIX Gateway for Direct Trading Members, and to amend the notice period in which a Member must report an error in settlement to 24 hours following the settlement, rather than 5 days.

The Nadex Rulebook currently grants Direct Trading Members the ability to access the Exchange via FIX Gateway. After careful analysis of the costs and benefits to granting such access, Nadex has made the determination that it is in the best interests of the marketplace to cease offering such connections to Direct Trading Members. Several factors were taken into consideration when making this decision, namely the cost of establishment and ongoing maintenance of the connection, and the degradation of the quality of the market as the result of liquidity takers. All individual and entity Direct Trading Members will continue to have access to the markets via the Internet.

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Additionally, Nadex is amending the notice period in which a Member must report an error in settlement to 24 hours following the settlement, excluding non-Trading Days, rather than 5 days. Nadex believes the amended notice period is appropriate given the short duration of its contracts, which can be as little as 5-Minutes and 20-Minutes for many of its Intraday Binary contracts, and affords its participants sufficient time in which to review market activity and raise a question if an error is suspected.

### DCM Core Principles

No Designated Contract Market (“DCM”) Core Principles were identified as potentially being impacted by the amendment to the settlement error notice period.

Nadex has identified the following DCM Core Principles as potentially being impacted by the amendments to the FIX connection methods and fees: Core Principle 2 (Compliance with Rules), Core Principle 7 (Availability of General Information), Core Principle 12 (Protection of Markets and Market Participants).

Core Principle 2 (Compliance with Rules), implemented by Regulation 38.151 (Access Requirements), requires the DCM provide impartial access by “members, persons with trading privileges and independent software vendors.” Such access criteria should be impartial, transparent and applied in a non-discriminatory manner. Likewise, comparable fee structures should be in place for members, persons with trading privileges and independent software vendors receiving equal access to the DCM.

In its proposed amendments to Part 38 of the Commission’s Regulations, Commission staff noted that “A DCM can satisfy the requirement that membership and participation criteria are impartial, transparent, and non-discriminatory by establishing clear and impartial guidelines and procedures for granting access to its facilities and publishing such guidelines and procedures on its Web site. Such requirements may establish different categories of market participants, but may not discriminate within a particular category. Fee structures may differ among categories if such fee structures are reasonably related to the cost of providing access or services to a particular category. For example, if a certain category requires greater information technology or administrative expenses on the part of the DCM, then a DCM may recoup those costs in establishing fees for that category of member or market participant.”<sup>1</sup> The categories of participants with the ability to access Nadex markets include Direct Trading Members, Market Maker Members, FCM Members, and independent software vendors. Only the category of Direct Trading Members will no longer be able to obtain a FIX Gateway to access the markets, and therefore no discrimination within this category will take place. All Direct Trading Members will be able to access the market by the same means, over the Internet. Accordingly, the

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<sup>1</sup> 75 Fed. Reg. 80579 (Dec. 22, 2010).

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 Regulations 38.400 and 38.401 (General Requirements) require the DCM to make public the rules and specifications describing the operation of the DCM, as well as the DCM's Rulebook, and to ensure the Rulebook is complete and accurate. The Nadex Rulebook is, and will continue, to be made publicly available on the Nadex website and will reflect the amendments discussed herein.

Core Principle 12 (Protection of Markets and Market Participants), implemented by Regulation 38.651 (Protection of Markets and Market Participants) requires the DCM establish and enforce rules to promote fair and equitable trading on the market and to protect market participants from abusive practices. The decision to no longer offer FIX Gateway connections is in part based on efforts to prevent opportunities for market taking during periods of market making latency. Thus the action is being taken to promote fair and equitable trading and will not negatively impact Nadex's ability to comply with this Core Principle.

#### DCO Core Principles

Nadex has not identified any Derivatives Clearing Organization ("DCO") Core Principles as potentially being impacted by the amendments to the FIX Gateway connection references.

Nadex has identified the following DCO Core Principle as potentially being impacted by the amendments to the notice period for potential settlement errors: Core Principle E (Settlement Procedures).

Core Principle E, implemented by Commission Regulation 39.14, requires the DCO ensure that settlements are final when effected, with the exception that provisions may be made for the correction of errors. Nadex is amending its Rule 6.3 to shorten the period during which a report of a potential settlement error may be made, and therefore is providing for the correction of errors. Outside of this notice period, settlements will be final. Accordingly, amendments to the Rule will not have a negative impact on Nadex's ability to comply with this Core Principle.

Pursuant to the 10-day filing period under Regulation 40.6(a)(3), Nadex intends to implement the amendments discussed herein on September 12, 2016.

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

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No substantive opposing views were expressed to Nadex with respect to these amendments.

Nadex hereby certifies that the amendments and additions contained herein comply with the Act, as amended, and the Commission Regulations adopted thereunder.

Nadex hereby certifies that a copy of these amendments 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 [jaimewalsh@nadex.com](mailto:jaimewalsh@nadex.com).

Sincerely,



Jaime Walsh  
Legal Counsel

**EXHIBIT A**

<b>Rule</b>	<b>Asset</b>	<b>Duration/Close Time</b>	<b>Action</b>	<b>Effective Date</b>
3.1	Trading Members – Applications, Classifications, and Privileges	N/A	Remove references to FIX Gateway.	9/12/2016
5.5	Order Entry	N/A	Remove references to FIX Gateway.	9/12/2016
6.3	Settling Contracts at Expiration	N/A	Amend notice period of settlement error to 24 Hours rather than 5 Days	9/12/2016

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# EXHIBIT B

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Amendment of Rules 3.1, 5.5, 6.3

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

**RULE 3.1 TRADING MEMBERS - APPLICATIONS, CLASSIFICATIONS, AND PRIVILEGES**

- (a) To be eligible to become a Trading Member:
- (i) An applicant who is an individual, must:
- 1) provide Nadex with any information or documentation Nadex deems necessary in order to verify the applicant's identity, perform a criminal background check, or otherwise review information provided on an Application for Membership or by a third party provider<sup>2</sup>;
  - 2) have an account or accounts in the Trading Member's name with a US Financial Institution that the Trading Member will use to fund its Nadex account at the Nadex settlement bank, and to receive funds from its Nadex account, or, if the Trading Member is a non-United States resident, have an account or accounts in the Trading Member's name with either a US Financial Institution or a Foreign Bank that the Trading Member will use to fund its Nadex account at the Nadex settlement bank, through a Correspondent Account, and to receive funds from its Nadex account via one of the acceptable methods as stated on the Nadex website<sup>3</sup>; and
  - 3) certify that
    - (A) the applicant is old enough to enter into a legally enforceable contract and has reached the required age as stated on the Membership Agreement;
    - (B) the applicant has read and understands the Nadex Risk Disclosure Statement and Membership Agreement;
    - (C) the applicant agrees to be bound by these Rules; and

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<sup>2</sup> Required documentation may vary depending on the applicant's residential location. Specific residential locations from which Nadex may accept applications for Membership will be identified on the Nadex Membership application.

<sup>3</sup> All funds deposited into the Trading Member's Nadex account at the Nadex settlement bank shall be in U.S. dollars. All withdrawal payments from the Trading Member's Nadex account will also be made in U.S. dollars.

(D) the applicant will trade only for itself and will not trade as an intermediary for any other person or entity.

(ii) An applicant that is an entity must

(1) be organized in the United States;

(2) provide Nadex with a valid Taxpayer Identification Number;

(3) provide Nadex with a valid Legal entity Identifier as described in Commission Regulation §45.6;

(4) have an account or accounts in the Trading Member's name with a Financial Institution that the Trading Member will use to fund its Nadex account at the Nadex settlement bank, and to receive funds from its Nadex account, via one of the acceptable methods as stated on the Nadex website; and

(5) designate Authorized Trader(s) to trade its account and agree that such Authorized Trader(s) will trade only for it and will not trade for him/herself or as an intermediary for any other entity or person;

(6) designate at least one officer who is responsible for supervising all activities of its employees relating to transactions effected on Nadex or subject to Nadex Rules and provide any information Nadex may request regarding such officer(s);

(7) agree to be bound by these Rules; and

(8) certify that

(A) the applicant is validly organized, in good standing, in the United States;

(B) the applicant is authorized by its governing body and, if relevant, documents of organization, to trade commodities, swaps, futures and options contracts, and

(C) the applicant has read and understands the Nadex Risk Disclosure Statement and Membership Agreement.

(b) In order to become a Trading Member, an applicant who is an individual must complete and submit the Nadex on-line membership application, provide Nadex with any other information Nadex may request, and fund its Nadex account by transferring to the appropriate segregated Cleared Swap Proprietary Account at Nadex's settlement bank an initial deposit of no less than \$100 in funds from its account at a Financial Institution. An applicant who is an entity

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must complete an Account Certification, Membership Agreement, and W-9, which collectively shall constitute the membership application, provide Nadex with any other information Nadex may request, and fund its Nadex account by transferring to the appropriate segregated Cleared Swap Proprietary Account at Nadex's settlement bank an initial deposit of no less than \$100 in funds from its account at a Financial Institution. All funds deposited by Trading Members shall constitute "Member Property" in accordance with CFTC Regulations.

(c) Submission of a membership application to Nadex constitutes the applicant's agreement to be bound by these Rules and other policies of Nadex.

(d) If an application is approved by Nadex and the Nadex settlement bank confirms to Nadex that the applicant has deposited with it the funds required in paragraph (b) of this Rule, the applicant will be a Trading Member of Nadex and will have the following privileges, which Nadex may revoke, amend, or expand in accordance with, or by amending, these Rules:

(i) to maintain a Nadex account;

(ii) to buy Contracts on the Market using the funds in its Nadex account;

(iii) to sell Contracts on the Market using the funds in its Nadex account;

(iv) to view "real-time" the same best bids to buy and offers to sell the Contracts traded on the Market as are available to all other Members;

~~(v) to receive access to the Market via the FIX Gateway (Internet), provided the Trading Member executes a Nadex FIX Connection Agreement, agrees to pay any and all trading and other fees or charges incurred for such access and complies with any requirements or restrictions established by Nadex in connection with such access;~~

~~(v)(vi)~~ to view the current trading volume and open interest for the Contracts traded on the Market; and

~~(vi)(vii)~~ to view all non-secure parts of the Nadex website, including these Rules, and descriptions of Contracts traded on the Market as well as all secure parts of the Nadex website outlined above in Rule 3.1(d)(i) – (vi).

(e) Nadex may in its sole discretion approve, deny, or condition any Member application as Nadex deems necessary or appropriate.

(f) A Trading Member that is an individual, may not maintain and/or trade more than one Nadex account. The Authorized Trader(s) of a Trading Member that is an entity, may not maintain a separate Nadex account and/or trade any Nadex account other than that entity's account.

#### RULES 3.2 – 5.4 [UNCHANGED]

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## RULE 5.5 ORDER ENTRY

### (a) Trading Member Orders

(i) A Trading Member will enter orders to trade Contracts by electronic transmission over the Internet. A Trading Member may elect to enter into a FIX Connection agreement with Nadex, which will provide for specific FIX Connection fees, and if approved by Nadex, may submit orders over a FIX Connection in

(ii) accordance with Nadex's applicable policies and procedures. A Trading Member who is not engaged in activity pursuant to a Market Maker Agreement, and who elects to submit orders via FIX connection may do so over Internet, and may not submit more than four orders per one second.

(ii) A Trading Member will enter an order to trade one or more Contracts by indicating to Nadex in the manner required by Nadex: (1) order direction (i.e., buy or sell); (2) order type (e.g., Limit Order or Market Order); (3) duration of the order (e.g., Fill or Kill, Immediate or Cancel, Good 'Til Cancel); (4) the Series of Contract; (5) the limit price at which the Trading Member wants to buy or sell the Contract, in the case of Limit Orders; (6) the number of Contracts the Trading Member want to buy or sell, and (7) the Tolerance Protection in the case of Market Orders With Protection.

(iii) In order to enter an order to trade one or more Contracts, a Trading Member will be required to submit the order to Nadex. Once the order is accepted by Nadex, Nadex will assign to the order an order confirmation number. This confirmation number will appear next to the associated order on the Trading Member's Order Ticket and Order History account pages. The Trading Member will be responsible for any and all order entries confirmed for its account and accepted by Nadex.

### (b) FCM Customer Orders

(i) A FCM Customer may not submit orders directly to the Exchange and all such order must be submitted by that Customer's FCM Member.

(ii) FCM Members may submit FCM Customer Orders by electronic transmission over a FIX Connection by Internet (SSL only), in accordance with Nadex's applicable policies and procedures.

(iii) FCM Members will submit a FCM Customer Order to trade one or more Contracts by indicating to Nadex in the manner required by Nadex: (1) order direction (i.e., buy or sell); (2) order type (e.g., Limit Order or Market Order); (3) duration of the order (e.g., Fill or Kill, Immediate or Cancel, Good 'Til Cancel); (4) the Series of Contract; (5) the limit price at which the FCM Customer wants to buy or sell the Contract, in the case of Limit Orders; (6) the number of Contracts the FCM

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Customer wants to buy or sell; (7) the Tolerance Protection in the case of Market Orders With Protection; (8) the FCM Customer Position Account identifier; and (8) the user identifier for the person who directed the submission of the order to the Exchange.

(iv) Upon receipt of a FCM Customer Order to trade one or more Contracts, a FCM Member will be required to ensure that the FCM Customer has on deposit with the FCM Member enough funds to cover the FCM Customer's maximum loss under the Contract(s) it is attempting to enter into before the order is submitted to Nadex. When the order has been submitted to and accepted by Nadex, Nadex will assign to the order an order confirmation number. This confirmation number will appear next to the associated order on the FCM Member's Order and Order History account pages. The FCM Member will be responsible for any and all order entries confirmed for its FCM Customer Position Accounts and its settlement accounts and accepted by Nadex.

(c) Nadex's trading system will keep an electronic record of all orders to trade Contracts, and all executed Contract trades. The records kept by Nadex will include all of the terms identified in paragraphs (a)(ii) – (iii) and (b)(iii) – (iv) of this Rule as well as the date and time that the transaction was completed to the nearest tenth of a second, for all executed Contract trades and to the nearest second for all orders to trade Contracts.

RULES 5.6 – 6.2 [UNCHANGED]

#### RULE 6.3 SETTLING CONTRACTS AT EXPIRATION

(a) When a Series of Variable Payout Contracts expires, those Contracts will settle in an amount (if any) determined by the calculations set forth in the definitions for Long and Short Variable Payout Contracts set forth in Chapter 1 of these Rules. When a Series of Binary Contracts expires and has a Payout Criterion that encompasses the Expiration Value of the Underlying, such Binary Contract will pay the Settlement Value for such Binary Contracts (e.g. \$100) to the holders of long positions in such Binary Contracts. Conversely, when a Series of Binary Contracts expires and has a Payout Criterion that does NOT encompass the Expiration Value of the Underlying, such Binary Contract will pay the Settlement Value for such Binary Contracts (e.g. \$100) to the holders of short positions in such Binary Contracts.

(b) On the Settlement Date;

(i) Nadex will notify all Members which Contract is going to pay a Settlement Value and which Contract will not pay a Settlement Value.

(ii) Nadex will immediately settle the Variable Payout Contracts by (A) debiting Nadex's settlement account in an amount equal to (1) any gains realized by Members (including customers of FCM Members) plus (2) any blocked funds that were debited from Members' accounts at the time the Variable Payout Contracts that are expiring were entered into that are not used to pay any losses on such Contract(s) and (B) crediting those amounts, respectively, to the accounts of

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(1) Members who realized such gains, in each case in the amount of such gains realized by each Member (including Customers of FCM Members), and (2) Members from whose accounts such blocked funds were taken, in each case in the amount of such blocked funds that was not required to pay losses experienced by such accounts on such Contracts.

(iii) Nadex will immediately settle the Binary Contracts by debiting the Nadex's settlement account in an amount no less than the Settlement Value for such Contracts multiplied by the total number of outstanding in-the-money Binary Contract positions and credit those funds to the applicable settlement accounts of the Members holding the in-the-money Binary Contract positions (or, in the case of Customers of FCM Members holding the in-the-money Binary Contract positions, to the settlement account of the FCM Member).

(iv) Nadex will delete all Contracts of the expiring Series from Trading Members' accounts and FCM Customer Position Accounts, as applicable.

(c) Any Person who believes there has been an error in settlement, must report that error to Nadex immediately. Such report must state the basis for the belief that there has been an error in settlement. If Nadex receives notice of a settlement error ~~before the end of the~~ within twenty-four hours of the fifth Trading Day following settlement, excluding non-Trading Days, Nadex will review that report and will correct any error that Nadex determines has been made. If Nadex does not receive notice of an error of settlement within twenty-four hours of the settlement, excluding non-Trading Days, before the end of the fifth Trading Day following settlement, then (i) settlement will be final and (ii) all Members agree that Nadex shall not be responsible to you in any fashion for an uncorrected error in settlement, including, without limitation, errors resulting from a calculation error, erroneous or incomplete data and/or input of data, or inaccurate collection of the settlement data set.

RULES 6.4 - 12.78 [UNCHANGED]

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*End of Rulebook.*

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# EXHIBIT C

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# INSERT FEE SCHEDULE

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