



## Rule Self-Certification

October 22, 2015

### VIA ELECTRONIC PORTAL

Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Re: **Regulation §40.6 Submission Certification**  
**Wash Trading Guidance**  
**Reference File: SR-NFX-2015-77**

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 under the Act, NASDAQ Futures, Inc. (“NFX” or “Exchange”) amends its Wash Trading Guidance to provide guidance concerning Implied Orders. The Futures Regulatory Alert containing the Wash Trading Guidance is set forth in Exhibit A. The Futures Regulatory Alert would be issued on November 6, 2015, the date of implementation.

The Exchange has previously issued guidance concerning Wash Trades.<sup>1</sup> The Exchange will update its prior Futures Regulatory Alert to add guidance concerning Implied Orders and wash trading. The Exchange’s alert contains an FAQ which addresses various scenarios related to wash trading and trading prohibitions. Specifically, this update will provide that absent evidence to the contrary, self-match trades involving Implied Orders (Implied Out and Implied In) will be deemed unintentional. The Exchange desires to provide guidance with market participants with respect to prohibited activities on NFX.

With respect to the designated contract market core principles (“Core Principles”) as set forth in the Act:

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<sup>1</sup> See Futures Regulatory Alert 2015-2.

- *Compliance with Rules:* Today the Exchange has in place Rules which describe the manner in which Futures Participants may access and trade on NFX. Chapter II, Section I provides for the qualifications and rules of participation applicable to Futures Participants as well as Authorized Traders. Chapter V, Section 18 describes prohibited activities with respect to the Trading System. Trading is subject to the Rules at Chapter III of the Exchange's Rulebook, which include prohibitions against fraudulent, noncompetitive, unfair and abusive practices. Additionally, trading is subject to the trading procedures and standards in Chapter V of the Rulebook. The Exchange's disciplinary Rules are contained in Chapter VI of the Rulebook.
- *Prevention of Market Disruption:* The Exchange's Regulatory Department, which handles real-time surveillance, monitors trading activity on the Exchange with a SMARTS Surveillance Application through which the Exchange can track activity of specific Authorized Traders, monitor price and volume information and receive alerts regarding market messages. The Exchange's Regulatory Department, which handles real-time surveillance in conjunction with staff that handles T+1 surveillance, utilizes data collected by the SMARTS Surveillance Application to monitor price movements, as well as market conditions and volumes to detect suspicious activity such as manipulation, disruptive trading and other abnormal market activity.
- *Availability of Contract Information.* The Exchange has indicated within its trading Rules where specific information relates to a particular Contract. The Exchange will post the terms and conditions of Exchange Contracts in its Rulebook along with trading Rules.
- *Protection of market participants.* Chapter III of the Exchange's Rulebook contains prohibitions precluding intermediaries from disadvantaging their customers. These rules apply to trading in all Contracts.

There were no opposing views among the Exchange's Board of Directors, members or market participants. The Exchange hereby certifies that the Wash Trading Guidance in the form of a Futures Regulatory Alert complies with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that a notice of pending certification with the Commission and a copy of this submission have been concurrently posted on the Exchange's website at <http://www.nasdaqomx.com/transactions/markets/nasdaq-futures>.

If you require any additional information regarding the submission, please contact Angela S. Dunn at +1 215 496 5692 or via e-mail at [angela.dunn@nasdaq.com](mailto:angela.dunn@nasdaq.com). Please reference SR-NFX-2015-77 in any related correspondence.

Regards,

A handwritten signature in black ink that reads "Daniel R. Carrigan". The signature is written in a cursive, flowing style.

Daniel R. Carrigan  
President

cc: National Futures Association  
The Options Clearing Corporation

## Exhibit A

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### Futures Regulatory Alert #2015 - XX Wash Trades Prohibited

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#### Category:

System Impact

#### Markets Impacted:

[Nasdaq Futures](#)

#### Contact Information:

[U.S. Market Operations - Futures & Options](#) at +1 215 496 5409

[U.S. Market Sales](#) at +1 844 236 3191  
[Futures Sales](#)  
[Futures Regulation](#)

#### Resources:

[Wash Trading FAQ](#)  
[Chapter V, Section 1\(c\)](#)  
[Chapter V, Section 24\(g\)\(3\)\(iii\)](#)

#### What you need to know:

- Entering into, or purporting to enter into, transactions to give the appearance that purchases and sales have been made, without incurring market risk or changing the Futures Participant's market position is considered wash trading which is precluded under NFX Rules at Chapter V, Section 1(c) and Chapter V, Section 24(g)(3)(iii).
- Parties must intend to execute the wash trade which can be inferred by prearrangement or by evidence that the parties knew or reasonably should have known that the execution would result in a wash trade.
- Intentionally entering transactions by parties with the same beneficial ownership or common beneficial ownership without incurring market risk or price competition is considered a wash trade.
- Knowingly accommodating the execution of wash trades is a violation of NFX Rules.

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### Wash Trading FAQs

#### **May an Authorized Trader accept Orders (buy or sell) for simultaneous execution in the same Product and Expiry, or in the case of options, the same put or call option and strike price?**

All Orders should be entered in good faith for the purpose of executing bona fide transactions. An Authorized Trader should not accept such Orders if that person knows, or reasonably should know, that the Orders are for the same account owner and the purpose of the Orders is to avoid taking a bona fide market position exposed to market risk. Similarly, an Authorized Trader should not accept buy and sell orders for different accounts with common beneficial ownership that are entered with the intent to negate market risk or price competition.

The CFTC has held that market participants may be found to have knowingly engaged in wash trades if they facilitate a wash result without having made sufficient inquiry as to the propriety of such orders prior to their execution. The failure of a market participant to undertake such inquiry may support an inference of knowing participation in wash trades.

**Does the prohibition in the NFX Rule apply in circumstances where the underlying beneficial ownership of the accounts is common but not identical?**

Where two accounts share common ownership, but less than 100% common ownership, the prohibitions apply nonetheless if the intent of the Orders is to negate market risk or price competition.

**What steps must an Authorized Trader take to fulfill his duty to inquire about the proprietary nature of the Orders described in the prior questions?**

The Authorized Trader should determine if the Orders are for accounts with common beneficial ownership.

If the Orders are for an omnibus account, the market participant should determine whether the Orders are for different customer accounts within the omnibus account. The Authorized Trader may choose to obtain a written statement from the entity carrying the omnibus account that states that such Orders are placed only for different customers within the omnibus account. However, while this approach generally will be sufficient to satisfy NFX requirements, there may be circumstances in which NFX or the CFTC finds this approach insufficient and would expect the Authorized Trader to make further inquiries to determine whether the Orders are attributable to different owners.

**If an Authorized Trader cannot verify that buy and sell Orders are for accounts with different beneficial ownership, what steps should be taken?**

The Authorized Trader may refuse to accept the Orders. If the Authorized Trader decided to accept the Orders, and assuming the parties have no knowledge of improper customer intent, regulatory risk may be mitigated by ensuring that there is a reasonable interval between the entry and execution of each Order entered into the Trading System.

**May an Authorized Trader accept an instruction to liquidate a position and then re-establish a new position (i.e. freshening of position dates)?**

Provided that the customer does not require that the liquidation and re-establishment of the position be executed simultaneously, such Orders may be accepted.

**In the event buy and sell Orders for accounts with common beneficial ownership are entered for a legitimate purpose, how should an Authorized Trader execute such Orders in a manner consistent with NFX Rules?**

One of the Orders should be entered and executed in full prior to the entry of the second Order. Evidence of entry time of the second Order will be required. This will ensure that the Orders are not executed opposite each other and will provide a clear audit trail with respect to the entry and execution of these Orders.

**Is regulatory risk mitigated by ensuring that there is a delay between the entry of buy and sell Orders for accounts with common beneficial ownership?**

No. Simply ensuring that there is a delay between the entry of the buy and sell Orders may not, depending on the terms of the Orders, preclude the Orders from trading in whole or in part against each other. To the extent that the Orders match with each other, the result may be deemed an illegal wash trade irrespective of the fact that the Orders were entered into the Trading System at different times.

A person who knowingly accommodates the execution of such trades, as described above, either directly or indirectly may be found to have violated the prohibition on wash trades. Additionally, in certain circumstances such Orders executed at nearly the same price, rather than at the same price, may violate the prohibition if it is demonstrated that the Orders were structured to negate risk, for example by requiring that the price difference between the two Orders be strictly limited.

**May an Authorized Trader enter buy and sell Orders for accounts with common beneficial ownership if the buy and sell Orders are executed by different firms?**

If these Orders, entered by an Authorized Trader from two different firms, trade against each other, in whole or in part, or if both Orders are executed opposite the same third party, an inference may be drawn that there was intent to execute a prohibited wash trade.

**Under what circumstances is trading with oneself in the Order Book a violation of NFX Rules regarding wash trading?**

NFX Rules provides that buy and sell Orders for accounts with common beneficial ownership must be entered in good faith for the purpose of making bona fide transactions. Thus, it is a violation of NFX Rules for a market participant to enter an Order into the Trading System that such market participant knew or should have known would match with a resting Order on the other side of the market for an account with common beneficial ownership. Generally, an unintentional or incidental matching of such buy and sell Orders will not be considered a violation of NFX Rules. Absent evidence to the contrary, self-match trades involving Implied Orders (Implied Out and Implied In) will be deemed unintentional. However, active Authorized Traders who frequently enter Orders on opposing sides of the market which may have a tendency to cross are strongly encouraged to employ functionality designed to minimize or eliminate their buy and sell Orders from matching with each other.

**Is it considered a violation of NFX Rules if Orders that are independently initiated by different proprietary Authorized Traders employed by the same firm match against each other?**

It is recognized that certain firms have proprietary trading operations in which various Authorized Traders making fully independent trading decisions enter Orders for the same beneficial owner (the firm's proprietary account) that coincidentally match with each other in the market. If the Orders are entered without pre-arrangement such trades are not considered to be in violation of NFX Rules. Firms should have policies and procedures designed to preclude affiliated Authorized Traders from trading against each other for the same beneficial account where such Authorized Traders have information knowledge of such Orders.

**Is it considered a violation of NFX Rules if Orders initiated for accounts with common beneficial ownership by one or more automated trading systems match against each other?**

If different automated trading algorithms associated with the same trading entity are entering Orders in the same Product and potentially may trade with one another, each such algorithm should be identified with a unique Authorized Trader ID as specified in NFX Rules at Chapter V, Section 1,. While it is not prohibited to run potentially conflicting algorithms simultaneously, if such trades cause price or volume aberrations, or occur frequently, the trading may be subject to particular scrutiny and may be deemed to violate NFX Rules. Market participants are responsible for monitoring their automated trading systems and for employing trading algorithms that minimize the potential for the execution of transactions which are not exposed to market risk.

**Do Block Trades between accounts of affiliated parties violate the wash trading prohibition?**

Block Trades between the accounts of affiliated parties are permitted provided that: (1) the Block Trade is executed at a fair and reasonable price; (2) each party has a legal and independent bona fide business purpose for engaging in the trade; and (3) each party's decision to enter into the Block Trade is made by an independent decision-maker. In the absence of satisfying the requirements above, the transaction may constitute an illegal wash trade.