November 20, 2018 Nasdaq Futures, Inc.

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Christopher J. Kirkpatrick 2929 Walnut Street

Office of the Secretariat Philadelphia, PA 19104 / USA

Commodity Futures Trading Commission

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Washington, DC 20581

**Rule Self-Certification: Rule Certification to Amend Minimum Block Thresholds for Certain Futures Contracts**

**Reference File: SR-NFX-2018-61**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Section 40.6 of the Commission’s regulations thereunder, NASDAQ Futures, Inc. (“NFX” or “Exchange”) hereby submits amendments lowering the minimum threshold requirements for futures contracts within certain asset classes based on an analysis of the liquidity and depth of the relevant futures contracts on the NFX platform. The Exchange anticipates the new rules going into effect on December 5, 2018 for trade date December 6, 2018.

**Exhibit 1 - Amendments to Rulebook Appendix A, Listed Contracts**

Block Trade Minimum Quantity Threshold and Reporting Times. Chapter IV, Section 11 of the Exchange’s rulebook provides for execution of block trades and requires the Exchange to designate the contracts in which block trades shall be permitted and to determine the minimum quantity thresholds for such transactions. Section 11(F) requires Futures Participants to ensure that block trades are reported to the Exchange within the number of minutes of the time of execution (the "Reporting Window") specified in the rules for the particular contract.[[1]](#footnote-1) After conducting a review of trading activity on the NFX platform, the Exchange is now amending the block rules for Oil & Refined Products, Natural Gas and Petrochemical contracts in light of the volume, liquidity and market depth of the relevant contracts.

**DCM Core Principles**

The Exchange has reviewed the designated contract market core principles (“Core Principles”) as set forth in the Act in connection with the amendments presented herein. Consistent with Core Principle 7 - Availability of General Information, the Exchange will post general information, including the NFX Rulebook as amended herein, on its website: [business.nasdaq.com/futures](http://business.nasdaq.com/nasdaq-futures/nfx-market).

**Core Principle 9 & §1.38 of the Commission’s Regulations**

With respect to the block trade amendments set forth in Exhibit A, the rule amendments comply with Core Principle 9 - Execution of Transactions and CFTC regulations. Core Principle 9 of the CFTC regulations requires a board of trade to provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market. Regulation §1.38 (Execution of Transactions) requires futures contracts traded on or subject to the rules of a contract market to be executed openly and competitively by open outcry or the posting of bids and offers.[[2]](#footnote-2) Subpart (b) of §1.38 goes on to say that this requirement shall not apply to transactions which are executed non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the non-competitive execution of such transactions. The CFTC designated NFX a DCM on November 21, 2014. As part of this designation, NFX submitted a rulebook for the Commission’s review and approval. Included in this rulebook were rules specifically allowing for the execution of futures transactions away from the central limit order book (CLOB) as required under §1.38(a). Rule amendments relating to minimum block thresholds however may be amended pursuant to rule certification under Part 40.6 of the Commission’s regulations.[[3]](#footnote-3)

Core Principle 9 and §1.38 are the only controlling rules governing the execution of block trades. No additional rules have been promulgated by the Commission to further outline how block trades for futures contracts should be executed on a DCM.[[4]](#footnote-4) In September of 2008 however, the Commission did publish a Proposed Rule amending Regulation §1.38 and providing Guidance on Core Principle 9 as they relate to block trades (the “Proposal”).[[5]](#footnote-5) Despite receiving numerous comments in response to the proposal, the Commission did not finalize this rule. As a result, the proposed amendments to Core Principle 9 and Regulation §1.38 are not controlling. They do however, provide the industry with persuasive informal guidance to be considered when proposing any changes to a DCM’s block trade rules.

In the Proposal, the Commission sought to provide DCMs with a more detailed structure by which to draft new rules applicable to the execution of block trades. The Proposal was based in large part on a previous rule proposal intended “to update the language of Regulation 1.38 to more accurately identify the types of transactions that may lawfully be executed off a contract market’s centralized market...”[[6]](#footnote-6) The 2008 Proposal contained proposed regulations, guidance and acceptable practices. In particular, the Commission proposed guidance that advised setting the minimum block threshold for any contract that has been trading for more than one calendar quarter or longer at a size that is larger than the size at which a single buy or sell order is customarily able to be filled in its entirety at a single price in that contract’s centralized market. The Commission stressed that “[s]uch calculations should be re-examined periodically, as volume, liquidity and market depth change over time to ensure that a contract’s minimum block trade size remains appropriate.”[[7]](#footnote-7)

NFX is now amending its rulebook to adjust the minimum block threshold to reflect this guidance. NFX is adopting different block thresholds based on the liquidity, volume and depth of the market in contracts in the Oil & Refined Products, Natural Gas and Petrochemicals asset classes. Within these asset classes, contracts with the most liquidity will have a tiered block threshold requiring market participants to meet a block threshold of ten (10) contracts in the front month and five (5) contracts in the back month for the most liquid contracts.*[[8]](#footnote-8)* For contracts that do not have high levels of liquidity, trade volume and market depth, the minimum block threshold will be set at five (5) contracts for both front and back month transactions. The changes to these block thresholds are noted in Exhibit A. NFX believes this approach adequately balances the need to encourage trading on the centralized marketplace while still adhering to the Commission’s proposed guidance that a block minimum be set at an amount larger than an individual order could be executed in the CLOB at one price.

In following the guidance provided by the Commission, these new minimum block thresholds are set at an amount that is larger than a single buy or sell order could customarily be filled in its entirety at a single price for the relevant contract on the NFX market. NFX would like to note that the Commission issued the above referenced guidance in an effort to aide DCMs in ensuring compliance with the Core Principles.[[9]](#footnote-9) While the proposed rule was not subsequently made into a final rule, it does provide the clearest guidance thus far from the Commission on how a DCM may establish minimum block thresholds that comply with the Core Principles and CFTC regulations.

**Lowering Block Thresholds Will Improve Price Discovery**

The Exchange believes this amendment to the minimum block threshold will actually lead to improved price discovery and encourage trading in the centralized market. Under the previous rules, market participants could only establish a position in the back month of the most actively traded contracts by trading in the CLOB, or executing a block trade that met the minimum threshold of fifty (50) contracts. Neither scenario was feasible considering the limited market on offer through the CLOB or the inordinately large position one would need to establish in order to meet the fifty (50) contract minimum threshold. With this rule amendment, more market participants may establish positions in the back months of contracts. This increase in open interest accomplished through the use of a lower minimum threshold for the back months, combined with a larger minimum block threshold in the front month (compared to back months) will lead to a larger volume of trading in the centralized market as participants exit their front month positions through CLOB trading. The Exchange is of the opinion that a fifty (50) block minimum threshold is so high that it keeps most participants out of the NFX market. The new back month block limit of five (5) contracts for actively traded contracts is high enough however to exceed the size of an order that could be filled through a single buy or sell order at a single price as advised in the Proposal, but low enough to make it economically feasible for participants to enter the NFX market and offset their risk. As time progresses and the front month approaches, there will be more market participants to trade, and in turn more open interest to be exited, as the font month arrives.

NFX would also like to note that all other rules pertaining to block trades outlined in Chapter IV, Section 11 of the NFX rulebook remain the same. Futures Participants may not aggregate orders in order to meet the minimum block threshold, block trades may only be executed by Eligible Contract Participants, a Futures Participant may only execute a block trade when the customer has specified that the order be executed as a block, the price at which a block trade is executed must be fair and reasonable in light of the size of the transaction, the prices and sizes of other transactions in the same Contract at the relevant time, the prices and sizes of transactions in other relevant markets, and the circumstances of the markets or the parties to the Block Trade. As outlined in the Proposal, NFX will assess the trading volume and liquidity on the Exchange on a periodic basis to determine if the minimum block thresholds need to be adjusted as market conditions change.

**Certifications**

There were no opposing views among NFX’s Board of Directors, members or market participants. The Exchange hereby certifies that the rule amendments set forth herein comply with the Act and the Commission’s regulations thereunder. The Exchange also certifies that notice of pending certification and a copy of this submission have been concurrently posted on the Exchange’s website at [business.nasdaq.com/futures](http://business.nasdaq.com/nasdaq-futures).

If you require any additional information regarding the submission, please contact Aravind Menon at (301) 978-8416 or aravind.menon@nasdaq.com. Please refer to SR-NFX-2018-61 in any related correspondence.

Regards,



Kevin Kennedy

Chief Executive Officer

Attachments:

Exhibit A: 73 FR 54097 – 2008 CFTC Notice of Proposed Rulemaking - Execution of Transactions: Regulation 1.38 & Guidance on Core Principle 9

Confidential Exhibit B: Additional Analysis of Core Principle 9 & Minimum Block Thresholds

Confidential Exhibit C: Spreadsheet listing trading data from May 1, 2018 through October 23, 2018 for NFX WTI Crude Oil Penultimate Financial Futures (TQ), NFX Henry Hub Natural Gas Financial Futures - 10,000 (HHQ) and comparable CME contracts.

1. See Rules Chapter IV, Section 11(F) provides: “Futures Participants must ensure that each Block Trade is reported to the Exchange within the number of minutes of the time of execution (the "Reporting Window") specified in the rules for the particular contract; except that Block Trades executed outside of Trading Hours must be reported within fifteen minutes of the commencement of the next Open Session of a Trading Session for that Contract. If the Block Trade includes certain legs subject to a 5 minute Reporting Window and other legs subject to a 15 minute Reporting Window, the reporting requirement for the transaction will be 15 minutes. The report must include the Contract, contract month, price, quantity of the transaction, the respective Clearing Futures Participants, the time of execution, and, for Options on Futures, strike price, put or call and expiration month. The Exchange shall promptly publish such information separately from the reports of transactions in the regular market. Failure to timely and accurately report Block Trades may subject the Futures Participant to disciplinary action.” [↑](#footnote-ref-1)
2. See §1.38 of the CFTC Regulations. [↑](#footnote-ref-2)
3. See 76 FR at 44776, 44781. “…the Commission notes that registered entities frequently submit product ‘‘terms and conditions’’ with accompanying rules—for example, *rules establishing block trade thresholds*— …[s]uch ‘‘rules’’ or ‘‘rule amendments’’ submitted in connection with the listing or trading of a product, if not included in the definition of ‘‘terms and conditions,’’ will not be effective and cannot be implemented until properly submitted for Commission review under §§ 40.5 or 40.6.” (emphasis added). [↑](#footnote-ref-3)
4. NFX notes that the Commission has promulgated new rules for the execution of block trades in the context of swaps transactions. As futures contracts were not included in that rulemaking NFX does not consider Part 43 to apply to a DCM exclusively trading futures contracts. [↑](#footnote-ref-4)
5. See 73 FR 54097, Exhibit A. [↑](#footnote-ref-5)
6. Id at 54098. [↑](#footnote-ref-6)
7. Exhibit A at 54100. [↑](#footnote-ref-7)
8. The front month refers to the contract month that is the nearest expiry month in relation to the trade date of the transaction. The back month is any expiry month later in time than the front month. [↑](#footnote-ref-8)
9. 73 FR at 54098, See “B. Core Principle 9 Guidance and Acceptable Practices”. [↑](#footnote-ref-9)